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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2020

PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.29309 of 2015 and
CrI.M.P.Nos.1 & 2 of 2015

1.Deivarayan
2.Balasubramanian

... Petitioners

Vs.

Maripichai,
S/o.Ranganathan Pillai,
No.1-A, Mukkulam Street,
Kottucherry Village and Commune,
Karaikal District.

Represented by his Power of Attorney Agent,
Murugan, M/42 years,
S/o.Sellaperumal,
No.3/21, Main Road,
Pappakoil,
Andanapettai Post,
Nagapattinam District Munsifi

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the C.C.No.43 of 2015 on the file of the Judicial Magistrate-II, Karaikal and quash the same as far as the petitioners are concerned.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondent : Mr.R.Vivekananthan

ORDER

The petitioners, who are the accused in a private complaint filed by the respondent before the learned Judicial Magistrate No.II, Karaikal in C.C.No.43 of 2015, for offence under Sections 465 and 471 of IPC, have filed the Quash Petition.

2.The gist of the case is that the respondent owns the property to the extent of 12A 60CA in R.S.No.210/1 in O.S.No.547 bis out of total extent of 41A 00CA on the middle portion situated in Kottucherry Village, Karaikal. The



southern 1/3 of the said survey number came to be owned by one Govindarassu Pillai, the junior paternal uncle of the 1st petitioner and he sold the same to one G.R.Apparaj by way of registered sale deed dated 07.03.1984 and the said G.R.Apparaj is in peaceful possession of the said property. The middle portion was owned by the respondent through his father Rangananthan Pillai. The northern 1/3 was allotted to one Sokkalingam Pillai and after his death, the same is in the possession of one Deivaraya Pillai, son of Venkatachalam Pillai. The middle 1/3 of the above survey number was allotted to one Singaravelu Pillai and subsequently, the said property came to the hands of the father of the respondent and on his death to the respondent.

3.The respondent fenced his 1/3 of the middle portion of the property and later, he sold the same by way of registered sale deed dated 21.04.1993 to one A.Rajendran for constructing industrial unit. Since the said A.Rajendran could not get the industrial loan as planned for constructing industry, he reconveyed the property to the respondent on 08.03.2002 and the respondent was in continuous possession of the said property. During the month of July 2010, the respondent applied for electricity connection for one of the middle portion of the property, at that time, the 1st petitioner herein filed objection based on the copy of the document of Notarial Partition Deed dated 26.08.1933. In the said document in page No.7, at punja lot item No.8, the property is classified as "Parateru Maniakat Northern Side". In the said document, interpolation and correction have been made to appear that the father of the 1st petitioner was allotted 3 Mah 14 Kuzhies. On close perusal of the partition deed, it was found that originally, only 14 kuzhies were mentioned and 3 Mah have been included later by some unknown persons in Karaikal revenue records. Hence, the respondent lodged a complaint to the Inspector of Police, Karaikal Town Police, Karaikal and the same was registered in Crime No.35 of 2012 against unknown officials of the Sub Registrar Office, Karaikal on 22.02.2012. On completion of investigation, on 14.12.2013, a final report filed for the reason that "Since the fixing of erring officials / staff could not be made and the case was also not able to finalize in the near future, I treated this case as UN-DETECTED and stopped further proceedings in this case and I prepared final report as UNDETECTED for the time being provided that the case will be reopened as and when necessity arises." and also found that some persons working in the Sub Registrar Office, Karaikal made correction and insertion in the documents from 00 Mah 14 Kuzhies to 3 Mah 14 Kuzhies for vested interest. This correction is said to have taken place during the period from 22.01.2006 to 21.05.2010 has been proved.

4.The beneficiaries of the correction and interpolation are the petitioners herein. Based on the correction, the petitioners have also filed a civil suit in O.S.No.582 of 2011



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with the forged documents before the learned Principal District Munsif, Karaikal to legitimize the forgery and to make claim over the property. Since the Inspector of Police, Karaikal Town Police, Karaikal failed to take any action despite coming to know about the forgery committed in the revenue records, the respondent filed a private complaint before the learned Judicial Magistrate No.II, Karaikal, enlisting witnesses and documents. The learned Judicial Magistrate No.II, Karaikal on examination of witnesses and perusal of documents finding prima facie in the complaint taken same on file in C.C.No.43 of 2015 and issued summons to the petitioners, against which the present Quash Petition has been filed by the petitioners.

5.The contention of the petitioners is that the petitioners are in peaceful possession of the disputed land. Originally, the property belonged to the father of the 1st petitioner Muthukrishna Pillai by virtue of the Notarial Partition Deed dated 26.08.1933 and after his death, leaving behind his son/1st petitioner, wife Meenatchiammal and elder brother M.Kesavan as his legal heirs. The 1st petitioner's mother Meenatchiammal died in the year 2002. On 30.11.2007, the 1st petitioner's elder brother executed a registered release deed and relinquished his share in the said property in favour of the 1st petitioner and the 1st petitioner became the absolute owner of the property. The patta for the entire extent of the land in R.S.No.210/1 stands jointly in the name of the 1st petitioner, his cousin brother S.Kannusamy Pillai and Ganapathy Pillai. The old patta number is 320 and new patta number is 1209. The respondent is no way connected with the property in dispute.

6.He further contended that on 09.04.2011, the respondent without any right or title over the property visited the suit property and threatened the petitioners that they would be dispossessed from the property by force. Immediately on 12.04.2011, the petitioners issued a legal notice to the respondent, for which the respondent gave reply to the same on 17.05.2011. In the reply, the respondent has made claim over the suit property under the Notarial French Sale Deed dated 14.08.1891 in favour of his father and further informed that a portion of the suit property was sold to one A.Rajendran in the year 1993, but the possession was not handed over to the said Rajendran and later, the said A.Rajendran had reconvened the property in favour of the respondent on 08.03.2002 under the registered sale deed. In the sale deed executed in favour of the said A.Rajendran, the respondent traced his title to the property under a partition deed dated 06.08.1966. The respondent was not definite how the property got devolved to him. On the one hand the respondent claims that the property devolved to his father under Notarial French sale deed dated 16.08.1891, on the other hand he claims the property devolved to his father under the partition deed dated 06.08.1966. This would clearly expose that the respondent has got no right or



title over the property.

7. It is further contended that right from 09.04.2011, the respondent had been creating problem and threatened to dispossess the petitioners from the property. Hence, the petitioners have lodged a complaint to Kottucherry Police on 20.04.2011 and during enquiry, the respondent appeared before the Police and unable to give proper explanation. Thereafter, during the last week of September 2011, the respondent attempted to sell the property and hence, a legal notice was sent to the Sub Registrar, Karaikal by the 1st petitioner. The respondent approached the Sub Registrar, Karaikal with the sale deed for the disputed land and the Sub Registrar, Karaikal refused to register the said document for the reason that he had no title over the suit property.

8. Thereafter, the respondent lodged a complaint to the Inspector of Police, Town Circle, Karaikal and the same was registered in Crime No.35 of 2012. During enquiry, the 1st petitioner handed over the original French Notarial French Partition Deed dated 26.08.1933 to the Inspector of Police, Town Circle, Karaikal. After enquiry, the Police found that the claim of the respondent is false and unsustainable and hence, closed the case in Crime No.35 of 2012 as stated above.

9. Therefore, the contention of the respondent can be ascertained only on the basis of the evidence to be let before the Civil Court, since it is a civil dispute. The respondent knew very well that the civil suit filed by the petitioner is pending in O.S.No.582 of 2011 and to circumvent the same, he gave criminal colour to the civil dispute and filed the private complaint before the learned Judicial Magistrate No.II, Karaikal to harass the petitioners and to usurp the property from the petitioners by all means.

10. Further, the respondent failed to file any protest petition against the closure report of the Inspector of Police, Town Circle, Karaikal in Crime No.35 of 2012, on the other hand suppressing the same, has filed the private complaint against the petitioners. Hence, he prayed for quashing the complaint against the petitioner.

11. The learned counsel for the respondent submitted that during the year 2011, the respondent lodged a complaint to the Inspector of Police, Town Circle, Karaikal stating that the petitioner gave objection using the forged document when he applied for electricity connection. The 1st petitioners is making claim on the document which was available in the Sub Registrar Office, Karaikal wherein the land particulars in the registers maintained in the office has been corrected and forged. Though the FIR was registered on the complaint of the respondent in Crime No.35 of 2012 for offence under Sections 468 and 471 IPC, after investigation a closure report has been filed for the reason that "Since the fixing of erring



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officials / staff could not be made and the case was also not able to finalize in the near future, I treated this case as UN-DETECTED and stopped further proceedings in this case and I prepared final report as UNDETECTED for the time being provided that the case will be reopened as and when necessity arises." In the closure report, it is mentioned that for the time being the case to be closed and undetected and in future, if the person involved in the said correction and tamper of the Government records is found, the case would be investigated and appropriate final report would be filed.

12. In this case, one thing is certain that the correction and forgery in the Government records have been proved and the petitioners are the beneficiaries, who are claiming right over the property based on the correction and forgery made in the Government records. During investigation, in the document produced by the 1st petitioner in connection with R.S.No.210/1 for objecting to provide electricity connection to the respondent, it has been mentioned as 00 Mah 14 Kuzhies in page No.7 and in item No.8, it has been altered by some person in the registration book of the Sub Registrar Office, Karaikal as 3 Mah 14 Kuzhies. The copy of the document dated 21.02.2006 was compared with the copy of the document dated 21.05.2010 and found that the alteration was made in between the above said period. The Inspector of Police, Town Circle, Karaikal seized the original partition document dated 26.08.1933 containing 9 sheets in Sl.Nos.188 to 196 in presence of independent witnesses. The original document of the year 1933 have been compared with the documents submitted by the 1st petitioner along with the original FMB copy with all partitions, which was received from the Assistant Director of Survey/IOS, Survey Department, Branch Office, Karaikal. Finally, it was confirmed that the forgery has been committed in the Government records and the petitioners are claiming right over the property based on the forged documents. Further, using the forged document, the 1st petitioner filed a civil suit in O.S.No.582 of 2011 before the learned Principal District Munsif, Karaikal and the respondent also submitted the copy of the Notarial Partition deed dated 26.08.1933 and the certified copy obtained on 06.01.2004, 21.02.2006 and during the year 2010, wherein in page No.7 of the document, there have been clear interpolation. This interpolation is a forgery as confirmed by the Inspector of Police, Town Circle, Karaikal. Hence, the claim of the 1st petitioner that a civil dispute is being given in a criminal colour is not sustainable.

13. The learned counsel for the respondent further submitted that the respondent on coming to know about the inaction of the Police has filed the private complaint before the learned Judicial Magistrate No.II, Karaikal enlisting witnesses and documents. The learned Judicial Magistrate No.II, Karaikal recorded the sworn statement of the respondent and perused the document and having satisfied that a prima



facie has been made against the petitioners, issued summons to them. The petitioners immediately on receipt of the summons approached this Court, due to which the proceedings in C.C.No.43 of 2015 has been stalled.

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14.The grievance of the petitioners are factual and disputed, which ought to be decided only during the trial by the trial Court and not in the above Quash Petition and hence, prayed for dismissal of the same.

15.This Court considered the rival submissions and perused the materials available on record.

16.Initially, the respondent lodged a complaint against the unknown officials of the Sub Registrar Office, Karaikal and a case in Crime No.35 of 2012 came to be registered on 22.02.2012. After completion of enquiry, a final report has been filed on 14.12.2013 and on perusal of the final report, it is seen that during the period from 22.01.2006 to 21.05.2005 tampering and correction in Government records have taken place in the Sub Registrar Office, Karaikal. The original partition deed dated 26.08.1933 containing 9 sheets and the Sl.No.182 to 196 were seized in presence of the independent witnesses. From the documents it is found that there have been interpolation and insertion in the Government records of the Sub Registrar Office, Karaikal, wherein 3 Mah has been included and shows as though it is 3 Mah 14 Kuzhies. The 1st petitioner claiming right over the property filed the civil suit in O.S.No.582 of 2011 based on the corrected property details in it. The investigation conducted by the Inspector of Police, Town Circle, Karaikal found that there have been interpolation and correction in the Government records which has been confirmed through the attested copy of the inspection report obtained from the Electricity Department, Karaikal and likewise, the original FMB copy (Survey Sketch) of R.S.No.210/1 with all partition situated at Jeeva Nagar, Kottucherry R.V 26 No.32, dated 26.10.1993 have been received from Assistant Director Survey/IOS, Survey Department, Branch Office, Karaikal and a reply from Directorate of Accounts and Treasuries (Branch Office), Karaikal vide No. 239/DDATK/E2/2013-14, dated 06.06.2013.

17.The categorical finding of the investigation conducted by the Inspector of Police, Town Circle, Karaikal is that "Since the fixing of erring officials / staff could not be made and the case was also not able to finalize in the near future, I treated this case as UN-DETECTED and stopped further proceedings in this case and I prepared final report as UNDETECTED for the time being provided that the case will be reopened as and when necessity arises." Having no other option, the respondent has filed the private complaint before the learned Judicial Magistrate No.II, Karaikal along with the witnesses and documents. The learned Judicial Magistrate No.II, Karaikal recorded the sworn statement of the



respondent, perused the materials and finding prima facie case made against the petitioners, had rightly taken the case on file and issued summons.

18.This Court on perusal of the documents and other materials produced, it could be seen that it is a clear case of tampering and correction in Government records amounting to forgery. The 1st petitioner is making his claim based on the forged document and also filed a civil suit in O.S.No.582 of 2011. As of now, there are enough materials against the petitioners who are the beneficiaries. Hence, the Quash Petition deserves to be dismissed and accordingly, dismissed.

19.Finding that the case is of the year 2015 and for six years, the case has been kept pending without any progress, this Court directs the learned Judicial Magistrate No.II, Karaikal to give top priority to the case in C.C.No.43 of 2015 and conclude the trial within a stipulated time. It is seen that there are only five witnesses and 12 documents in this case and hence, the trial to be preferably completed within a period of six months after lifting of lockdown and normal functioning of the Courts below. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

v2

To

The Judicial Magistrate No.II,
Karaikal.

+1cc to Mr.R.Vivekananthan, Advocate SR.No.27640

Cr1.O.P.No.29309 of 2015

KV(CO)
GMY(23/07/2021)