



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.280 of 2015

K.Shanmugam

...Appellant/Defacto
Complainant

..Vs..

1. Subramani (Deceased)
2. Annamalai
3. Swaminathan
4. The State rep.by
Sub-Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram
(Crime No.677/2007)

...Respondents/Accused
2&3/ Defacto Complainant

PRAYER: Criminal Appeal filed under Section 372 (3) of Cr.P.C, to set aside the order of the judgment of acquittal dated 09.01.2015 by learned Judicial Magistrate No.II, Kancheepuram in C.C.No.170 of 2009.

For petitioner : Mr.K.Balaji

For R1 : Deceased

For R2&R3 : Mr.Y.Jyothish Chander

For R4 : Mr.S.Vinoth Kumar,
Public Prosecutor (Crl.Side)

J U D G M E N T

The defacto-complainant is the appellant herein.

2. This Criminal Appeal has been filed as against the order of acquittal dated 09.01.2015 passed by the learned Judicial Magistrate No.II, Kancheepuram in C.C.No.170 of 2009.

3. The respondent/police filed a charge sheet in Crime No.67/2017 alleging commission of offences under Sections 420, 468 & 417 I.P.C against the respondent herein.



4. Pending trial, the first accused Subramani S/o. Annamalai died and hence charge against them stood abated.

5. Before the trial Court, P.W.1 to P.W.14 were examined and Exs.P1 to P30 were marked. On behalf of the respondent, A3 was examined as R.W.1 and Exs.R1 to R8 were marked.

6. The case of the private complainant is that, as per the sale deed Ex.P6, the property was purchased by the defacto-complainant and Ex.P7 patta was also obtained. That being the case, the property was held by the respondents by fabrication of the document and hence the complaint. The suggestive case of the accused/respondents is that the properties in documents Ex.P7 and Ex.P18 were originally purchased by the persons as below:-

GENEALOGY AND DATES AND EVENTS

Arunachala Mudaliar

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{}

Kanniappa Mudaliar-Saravana Mudaliar-Natesa Mudaliar-Ekambara Mudaliar

{}

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Annamalai-Ramalingam-Gangadharan

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Kanniappan-Arunachalam-Subramaniam

{}

Annamalai

{}

Swaminathan

(i) S.No.17/2-0.15 cents and other properties were owned by Arunachala Mudaliar

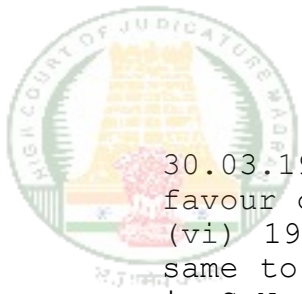
(ii) 05.05.1944 - Natesan Mudaliar and Ekambara Mudaliar sold their 1/4th share each in S.No.17/2 to Chinnasamy and Chengalvoroya Mudaliar under Sale Deed dt.05.05.1944.

(iii) 17.04.1952 - Chinnasamy Mudaliar and Chengalvaroya Mudaliar executed Settlement Deed dated 17.04.1952 (Ex.P2 and P3) in favour of Kanniammal to an extent of 1/2th share in S.No.17/2.

(iv) 25.07.1959 - Arunachalam his son Kanniappan, Arunachalam and Subramaniam partitioned the property vide Regd Partition Deed dt.25.07.1959 (Ex.D7)

- Whereunder the 1/2th share in S.No.17/2 was allotted to the share of Subramaniam

(v) 30.03.1992-Kanniammal executed partitioned deed dated



30.03.1992 (Ex.P5) in respect of entire 15 cents in S.No.17/2 in favour of her son Subbaroyan.

(vi) 1994 - Subramani (A1) & others formed layout and sold the same to third parties in the year 1994 in respect of 1/2th share in S.No.17/2.

(vii) 23.05.2007 - Subbaroyan sold the entire 15 cents in S.No.17/2 to the defacto complainant Shanmugham under Sale Deed dated 23.05.2007 (Ex.P6)

7. Accordingly, the vendor of the defacto-complainant does not have title to sale the entire property and has only a limited extent and patta, chitta and adangal of the year 1994, were marked as Ex.R3 to R5, to show that the accused/respondents are in possession and enjoyment of the suit property their constantly.

8. The learned Magistrate, after elaborately considering the oral evidences of P.W.1 to P.W.6 and P.W.9 Deputy Tahsildar and P.W.11 Tahsildar and also taking note of the fact that as per Ex.P17 and Ex.P18 original Sale Deeds namely the parent document, as held that the vendor of the defacto-complainant has no false title to the entire extent of the property.

9. After perusing these documents, I find that the property was belonging to Kanniammal and she acquired the land on the basis of the Partition Deed and the property was sold to Subbaroyan and the defacto-complainant has purchased the land of 15 cents from him.

10. However, on a perusal of the parent documents Ex.P17 and Ex.P18, the S.No. is mentioned as S.No.17/2. Therefore, the trial Court has rightly come to the conclusion that Kanniammal was having one share in the property and not the entire extent of property and the vendor defacto-complainant is not having the title to sale the entire property.

11. When that being the case, it is a matter of civil dispute and there cannot be any allegation of forgery or using the forged document as genuine. Further, the learned Magistrate has considered the entire genealogy and the dates and events in the documents and found that the dispute is of civil in nature and records a correct conclusion.

12. The learned Magistrate has taken a view that the vendor of the defacto-complainant does not have title to sale the entire property and hence the view taken by the learned Magistrate cannot be said to be erroneous.

13. Taking into consideration the scope of the appeal against order of acquittal and the factum of dispute being civil



in nature, I am not inclined to interfere with the findings of the order of acquittal passed by the Courts below, which are hereby confirmed.

14. In the result, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II, Kancheepuram
2. Do Thro The Chief Judicial Magistrate,
Kancheepuram.
3. The Sub-Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram
4. The Public Prosecutor
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to M/s.K.M.Balaji, Advocate, S.R.No.55787

+1cc to M/s.Y.Jyothish Chander, Advocate, S.R.No.55966

Cr1.A.No.280 of 2015

VSN-II (CO)
RGA(22/11/2021) (06/12/2021)