



WEB COPY

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.9637 OF 2018

AND

CRL.M.P.NO.4953 OF 2018

1.Mr.V.Vajjiram
2.Mr.V.Prabhu

.. Petitioners

Vs.

1. The State,
rep.by the Inspector of Police,
District Crime Branch, Kancheepuram,
(Cr.No.44/2017)
2. Mr.Saravanan
3. Mrs.K.R.Bhavani

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records culminating in Cr.No.44 of 2017 pending on the file of the 1st respondent i.e., District Crime Branch, Kancheepuram, and quash the same.

For Petitioner : Mr.Arun Anbumani

For RR1 : Mr.A.Gopinath
Government Advocate (Cr1.Side)

O R D E R

The petitioner has filed this petition to call for the records in Cr.No.44 of 2017, pending on the file of the 1st respondent i.e., District Crime Branch, Kancheepuram, and quash the same.



2. The case of the petitioner is that the 1st petitioner is the Father and 2nd petitioner is the Son of 1st petitioner. The 1st petitioner was the sole and absolute owner in possession and enjoyment of certain properties, including the property measuring an extent of 1 acre comprised in S.F.No.162/2B at No.99, Vedal Village, Kancheepuram Taluk and District, under a Will executed by his father Mr.Venugopal Mudaliar. Originally, the above property and several other extents of properties, was belonged to the joint family of 1st petitioner's father and his brothers. The respective properties were being enjoyed by the respective brothers as per their partition. Subsequently, 1st petitioner's father Mr.Venugopal Mudaliar, while in sound state of mind, had executed his last Will dated 25.06.1993, registered as doc.No.76/1993, on the file of the Sub Registrar, Kancheepuram Joint II, whereby he bequeathing his properties in favour of his three sons, including the 1st petitioner herein and his 6 daughters and thereafter 1st petitioner's father had died on 01.10.2000 and as per his Will, the 1st petitioner succeeded to the property measuring an extent of 38 cents comprised in S.No.144/8 and 1 acre comprised in S.No.162/2, totaling 1 acre 38 cents and the 1st petitioner is in continuous possession and enjoyment of the said properties. In the year 2006, a dispute arose amongst the 1st petitioner and his brothers regarding their partition in properties and the same was settled in Lok Adalat vide award dated 16.03.2007, whereby, the lands were confirmed to be that of the 1st petitioner.

3. After the untimely death of the 1st petitioner's daughter, he decided to settle his properties in favour of his son, who is 2nd petitioner herein and his deceased daughter's son. Accordingly, in respect of the 2nd petitioner herein, the 1st petitioner had executed a Settlement Deed, settling the said lands measuring an extent of 1 acre 38 cents in his favour vide a Settlement Deed dated 05.09.2006, registered as Doc.No.3862 of 2006 on the file of the Sub Registrar, Joint IV, Kancheepuram. After about 2 ½ years, in the year 2009, the 2nd petitioner decided to go to USA to pursue his education and therefore, he settled the said lands measuring an extent of 1 acre 38 cents in favour of the 1st petitioner, vide a Settlement Deed dated 02.01.2009, registered as Doc.No.11 of 2009 on the file of the Sub Registrar, Joint IV, Kancheepuram and thereby, the 1st petitioner was thus in possession and enjoyment of the property.



In the year 2011, the 3rd respondent has approached the 1st petitioner to purchase the land measuring an extent of 1acre comprised in S.F.No.162/2B and the 3rd respondent also purchased the said land for a sale consideration of Rs.30 lakhs vide Sale Deed dated 30.03.2011. Ever since the sale, the 3rd respondent was in uninterrupted ownership and also obtained patta in her name.

4. While being so, the 1st petitioner's cousin brother, namely, Mr.S.Natarajan, filed a Suit in O.S.No.62/2011, before the learned District Munsif at Kancheepuram, against the 2nd petitioner herein, seeking the relief of permanent injunction and the 1st petitioner's partitioned properties were also included in the suit scheduled properties and the said Suit was dismissed as withdrawn at the instance of the plaintiff therein, namely, Natarajan. After over a year, the said Natarajan along with his three brothers has once again filed O.S.No.28 of 2016 before the learned District Munsif at Kancheepuram, against the 1st petitioner and 12 others seeking the relief of declaration, delivery of possession and injunction of the properties in question and the 3rd respondent herein is the 13th defendant in the said Suit.

5. While such being the case, the 1st petitioner received summons from the 1st respondent Police to appear before them for an enquiry in respect of a complaint given by the 2nd respondent, who claimed to be an agent / representative of the 3rd respondent, for the offences under Section 420 and 34 IPC. The 1st petitioner has also duly participated in the enquiry and showcaused the facts. Despite that, the police had continuously harassing the petitioners at the instance of the 2nd respondent and hence, the petitioner left with no other option, is constrained to approach this Court, by filing this petition.

6. The learned counsel appearing for the petitioner submitted that the 1st petitioner has died and hence abated in respect of 1st petitioner and nothing survives for further adjudication against the 1st petitioner.

7. Insofar as the 2nd petitioner is concerned, the learned counsel appearing for the petitioner is made the following submission that the 2nd respondent alleged that the 1st petitioner suppressing the Settlement Deed in favour of his son,



had created fake documents and sold the property to the 3rd respondent and further complaining about the non disclosure of Suit in O.S.No.65/2011, which was already withdrawn by the plaintiff therein. It is true that the 1st petitioner executed a Settlement Deed, settling the lands measuring an extent of 1 acre 38 cents in favour of 2nd petitioner on 05.09.2006. Notwithstanding the fact, the 2nd respondent had settled the said lands again in favour of the 1st petitioner on 02.01.2009, itself and the 1st petitioner was thus in absolute ownership of the property. The 3rd respondent has approached the 1st petitioner for purchase of property only during the year 2011, after a few years of executing a Settlement Deed in favour of the 1st petitioner and the sale effected in favour of the 3rd respondent by the 1st petitioner was only in the year 2011. Therefore, on the date of purchase, the properties are free from encumbrances.

8. It is further submitted by the learned counsel appearing for the petitioners that though in the complaint, there is an allegation with regard to the pendency of Suit in O.S.No.65 of 2011, the said Suit was dismissed as withdrawn on 23.12.2014 and again one Natarajan has instituted Suit in O.S.No.28/2016 before the learned District Munsif at Kancheepuram, wherein, the 3rd respondent is arrayed as 13th defendant. She has also filed Written Statement on 20.07.2017 therein by admitting the 1st petitioner's clear title over the property and has neither made any allegations whatsoever against the petitioners herein, nor found fault with the execution of the Settlement Deeds between the petitioners. Despite that, the 3rd respondent in order to harass the petitioner, has initiated criminal prosecution against the petitioners. When the 3rd respondent is actively participating in the civil proceedings, the 1st respondent Police ought not to have registered an FIR against the petitioners. In such situations, lodging complaint against the petitioners is not sustainable and prays for quashment of the same.

9. The learned Government Advocate (Crl.Side) appearing for the 1st respondent submitted that it appears that there is a Civil Suit is pending in O.S.No.28/2016, before the learned District Munsif at Kancheepuram and therefore, the parties can go before the appropriate forum for redressal of their grievances and prays this Court to pass appropriate orders in that regard.



10. This Court has carefully considered the rival submissions and also perused the materials available on record.

11. It appears that the 1st petitioner has owned the property in question through execution of Will, executed by his father, namely, Venugopal Mudaliar and thereafter, he was in peaceful possession of the same. Due to death of his daughter, he decided to settle his portion in favour of his son and his deceased daughter's son and thereby he executed Settlement Deed settling the lands measuring an extent of 1 acre 38 cents in his favour vide a Settlement Deed dated 05.09.2006. After about 2 ½ years, in the year 2009, the 2nd petitioner decided to go to USA to pursue his education and therefore, he settled the said lands measuring an extent of 1 acre 38 cents in return to the 1st petitioner, vide a Settlement Deed dated 02.01.2009 and thereby, the 1st petitioner was an absolute owner. When the 3rd respondent approached for purchase of the said land, he executed Sale Deed dated 30.03.2011, in favour of her for the said land. Subsequently, one Natarajan, cousin brother of 1st petitioner, claiming delivery of possession and injunction, had filed O.S.No.28/2016, before the learned District Munsif at Kancheepuram against the petitioners and 12 others, wherein, the 3rd respondent herein is the 13th defendant. Knowing all these facts, the 3rd respondent has lodged criminal complaint against the petitioners, as if the petitioners were suppressed the facts of Settlement Deeds and civil proceedings over the property and further to the shock and surprise of the petitioners, they received summons from the 1st respondent Police for enquiry. Though initially, the Settlement Deed was created in favour of the 2nd petitioner on 05.09.2006, later it was again settled in favour of the 1st petitioner on 02.01.2009 and the sale of the property to the 3rd respondent was happened only during the year 2011 and by that time, the property was free from encumbrances and therefore, allegation with regard to the Settlement Deeds between the petitioners, is not justifiable.

12. Further with regard to the allegation of suppression of Suit in O.S.No.65 of 2011 is concerned, it appears that the same has been dismissed as withdrawn on 23.12.2014, i.e, much before the date of initiation of criminal complaint and therefore, complaint against the non-pending Suit is not acceptable and in subsequent Suit in O.S.No.28/2016, the 3rd respondent has also been arrayed as 13th defendant and she has



also filed written statement in the said Suit and the same is pending. Therefore, this Court is of the view that the allegations levelled against the petitioners in the complaint has no tenable grounds and hence, this Court has no hesitation to quash the same.

13. Since the 1st petitioner has died, this Criminal Original Petition is dismissed as abated insofar as the 1st petitioner is concerned and insofar as the 2nd petitioner is concerned, this Criminal Original Petition is allowed, for the reasons aforesaid and the complaint in Cr.No.44 of 2017, pending on the file of the 1st respondent, is quashed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

sk

To

1. The Inspector of Police,
District Crime Branch,
Kancheepuram,
2. The Public Prosecutor,
High Court, Madras.

Cr1.0.P.No.9637 of 2018

RLD(CO)
RLP(15/11/2021)