

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2020

PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.7727 of 2020 and
CrI.M.P.No.3960 of 2020

G.Ambiga

... Petitioner/A3

Vs.

1.State by,
The Inspector of Police,
District Crime Branch,
Cuddalore Division PS,
Cuddalore.
(Cr.No.29 of 2019).

2.Saravanan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the First Information Report in Crime No.29 of 2019 dated 12.11.2019 on the file of the respondent in respect of the petitioner herein.

For Petitioner : Mr.T.Sai Krishnan
For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor.

ORDER

The petitioner, who is the 3rd accused in Crime No.29 of 2019, for offence under Sections 423, 467, 468, 471 of IPC and Section 82(a) of the

Registration Act, 1908, on the file of the 1st respondent Police, has filed the above Quash Petition.

2.The gist of the case is that the 2nd respondent lodged a complaint on 12.11.2019 stating that his grandfather Natesan had five children viz., Thailammai, Kanniyappan (father of the 2nd respondent), Loganathan/A1, Periyamayagi and Anjalai. The said Natesan along with siblings owned land in Thondamanatham Village, Cuddalore District. Some properties were purchased by Natesan. The said Natesan died intestate in 1992 and his wife Sivabagyam died in the year 2002 leaving behind Kanniyappan (father of the 2nd respondent) and Loganathan/A1 (Two Males) and Thailammai, Periyamayagi and Anjalai (Three Females) as legal heirs. The properties were inherited and the same were enjoyed by them jointly in joint patta. A1/Loganathan settled in Coimbatore for the past 40 years and he is nothing to do with the property of Natesan.

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3.A1/Loganathan in connivance with A2/Village Administrative Officer, Thondamanatham and A3/the petitioner, Sub Registrar, Kullanchavadi had prepared forged legal heir certificate of Natesan, suppressing the other legal

heirs. A2/Village Administrative Officer without conducting any proper enquiry issued legal heir certificate to A1 which he is not empowered. The Village Administrative Officer is to conduct an enquiry, forward his report to the Revenue Inspector, who in turn to Tahsildar and the Tahsildar is the competent authority to issue the legal heir certificate. Contrary to the same, in this case, the petitioner, who is the Sub Registrar, Kullanchavadi relying on the legal heir certificate issued by A2/VAO, admitted the settlement deed vide document No.1436 of 2019 in favour of L.Mahadevi, wife of A1 and a sale deed vide document No.1435 of 2019 in favour of one A.Jayanthi on 29.07.2019 based on the forged legal heir certificate. The petitioner knowing well the genuineness of the document issued by A2/VAO who is not a competent person to issue such document, had accepted the same and registered the above documents. Hence, the 2nd respondent, who is the son of Kanniyappan (legal heir of Natesan), lodged a complaint to the 1st respondent Police. On the complaint, a case in Crime No.29 of 2019, for offence under Sections 423, 467, 468, 471 of IPC and Section 82(a) of the Registration Act, 1908, was registered.

4.The 1st respondent Police took up the investigation, recorded the statement of witnesses and collected documents and the investigation is at the penultimate stage. The above Quash Petition is filed by the petitioner/A3 to quash the FIR in Crime No.29 of 2019.

5.The learned counsel for the petitioner submitted that the 2nd respondent is none other than the brother's son of A1 and there seems to be some family dispute among themselves, for which the petitioner/A3 has been falsely implicated in this case. Admittedly, the petitioner was only a Sub Registrar, Kullanchavadi at the relevant point of time. As Sub Registrar, the petitioner's duty is to verify the identity of the parties; joint patta in the name of Natesan; legal heir certificate of the Village Administrative Officer confirming that the executant/A1 is the sole legal heir of Natesan. After verifying the same, the petitioner admitted the documents. Further, as per Section 86 of the Registration Act, 1908, no Registration Officer shall be liable to any suit, claim or demand by reason of anything done in good faith or refused in his official capacity. Therefore, the petitioner/A2 cannot be prosecuted. The petitioner acted only in his official capacity.

6.The learned counsel for the petitioner further submitted that the allegation made against the petitioner is bald in nature and there is no specific overtact against him to attract the offences. The learned counsel for the petitioner placed reliance on Rule 55 of the Tamil Nadu Registration Rules, wherein the duty of the Registration Officer has been clearly enlisted and the petitioner/A3 had acted as per the Rules. The Registering Officer of a document is not entitled to go into the title of the property.

7.In support of his submission, the learned counsel for the petitioner relied on the case of “***Santha Kumari Versus State by the Inspector of Police, Vaniyambadi, Vellore District in Crl.O.P.No.5645 of 2008, dated 26.03.2008***”, in which this Court had held that the Sub Registrar is not an authority to go into the title of the property, who has to only verify the identity of the person, collect necessary stamp duty and register the document.

8.Further, he relied on “***Satya Pal Anand Versus State of Madhya Pradesh reported in (2016) 10 Supreme Court Cases 767***”, for the proposition that Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure

that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. In the case of Park View Enterprises (supra) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

9.Hence, he prayed to quash the FIR against the petitioner/A3.

10.The learned Additional Public Prosecutor appearing for the 1st respondent Police has filed status report and submitted that complaint was received from the 2nd respondent on 12.11.2019. From the complaint, it is seen that the 2nd respondent's grandfather Natesan had five children Thailammai, Kanniyappan (father of the 2nd respondent), Loganathan/A1, Periyamayagi and Anjalai. In this case, A2 is the Village Administrative Officer of Thondamanatham Village and the petitioner/A3 is the Sub Registrar, Kullanchavadi during the relevant point of time.

11.He further submitted that A2/VAO had issued a legal heir certificate on 24.07.2019 stating that the said Natesan passed away on 24.06.1993 and his wife Dhanabagyam passed away on 17.07.2002 leaving behind Loganathan/A1 as only legal heir. The said Natesan had inherited the property jointly along with the other co-shares in patta Nos.419, 551, 1398, 2645 in Survey Nos.63/3, 64/10, 64/2, 301/2. Hence, the patta and ownership of the properties transferred in the name of Loganathanf/A1 being the only legal heir. Further, as per the guidelines issued by the Government in Government Letter (RE) No.1534 Revenue Department, dated 28.11.1991, the revenue officials in the rank of Tahsildar and above are only empowered to issue legal heir certificate and if there is any partition dispute among the legal heirs, issuance of legal heir is to be avoided. The petitioner's reliance on Section 86 of the Registration Act, 1908 on the facts of the case will no way help the case of the petitioner. The protection is only given for the acts which are done in good faith, not otherwise. In this case, the petitioner/A3 accepted the documents and the legal heir certificate issued by A2/VAO, when there is a clear guideline and rule that the legal heir certificate has to be issued by the revenue officials in the rank of Tahsildar and above. On the fact of it, the petitioner ought not to have accepted the document and registered the same.

Due to the petitioner registering the documents, now encumbrance have been created.

12.In this case, the investigation is at the crucial stage, within a short period, the charge sheet would be filed before the concerned Court. Hence, he prayed for dismissal of the Quash Petition.

13.This Court considered the rival submissions and perused the material produced.

14.The petitioner/A3 registered two documents namely document No.1435/1999, the sale deed executed by A1/Loganathan in favour of A.Jayanthi, wife of Anbalagan for 29 cents of land in new survey No.301/2 and old survey No.261/1 at Thondamanatham Village, Cuddalore District and the document No.1436/1999 the settlement deed executed by A1/Loganathan in favour of his wife L.Mahadevi. Both the documents were executed on 29.07.2019, in which the death certificate of Natesan; the legal heir certificate issued by A2/VAO, dated 24.07.2019; the joint patta in the name of Natesan and others forms part of the registered documents. From the documents, it is

clearly seen that the petitioner/A3 acted on the legal heir certificate and other documents issued by the revenue officials submitted by A1. The legal heir certificate has been issued issued by A2/VAO, who is not authorized and empowered to issue the same. As per the Government Letter (RE) No.1534 Revenue Department, dated 28.11.1981, it is the revenue official in the rank of Tahsildar and above to issue the legal heir certificate which is a known fact. The petitioner now claiming and feign ignorance about the legal heir certificate and seeking protection under Section 86 of the Registration Act, 1908 is not acceptable. Further, the registration authority has to make an enquiry and satisfy himself before registering any document and also to peruse the document presented for registration. In this case, the legal heir certificate issued by A2/VAO becomes part of the above said two documents and it is a forged document. This certificate is void and cannot be acted upon. The petitioner/A3, being a registration authority is well aware of the rules, procedures and guidelines of the Government. On the facts of the above case, the citations referred by the learned counsel for the petitioner are not applicable to the present case.

15.In view of the same, the submissions made by the learned counsel for the petitioner are not sustainable, to quash the FIR in Crime No.29 of 2019, dated 12.11.2019 and hence, the Quash Petition deserves to be dismissed and, is dismissed.

16.Considering the FIR has been registered in the year 2019 and the major portion of the investigation completed, the respondent Police is directed to complete the investigation and file the final report within a period of three months from the date of receipt of a copy of this order, after lifting of lock down and resumption of normal functioning of the Courts below. Consequently, the connected Criminal Miscellaneous Petitions are closed.

08.06.2021

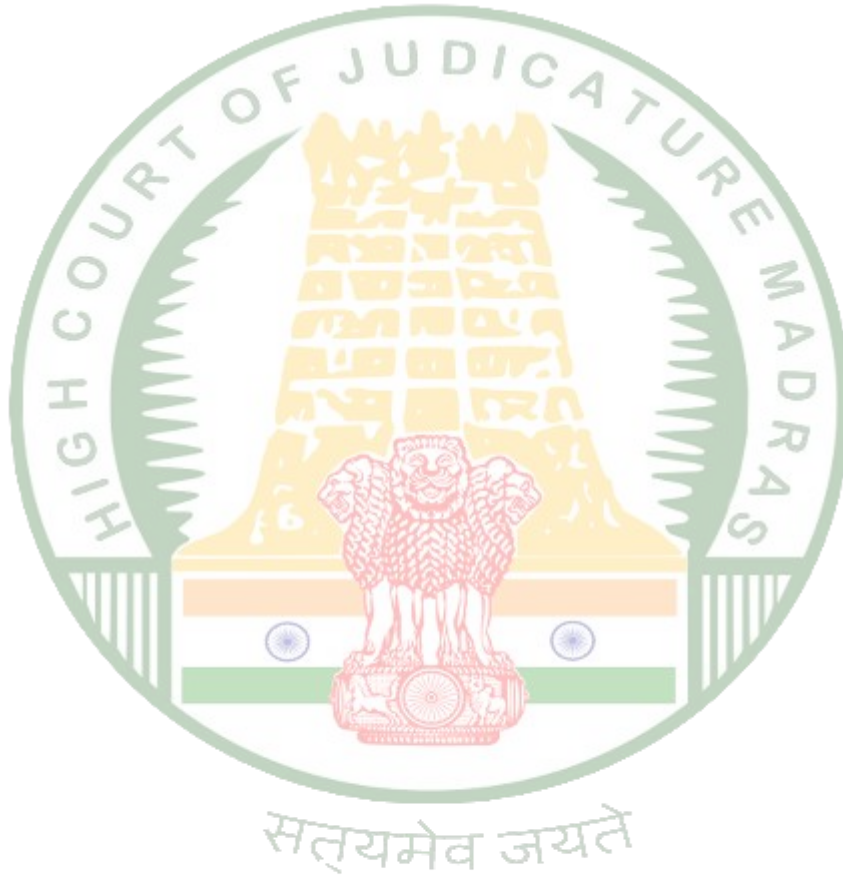
Index : Yes/No
Internet : Yes/No

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To

1.The Inspector of Police,
District Crime Branch,
Cuddalore Division PS,
Cuddalore.

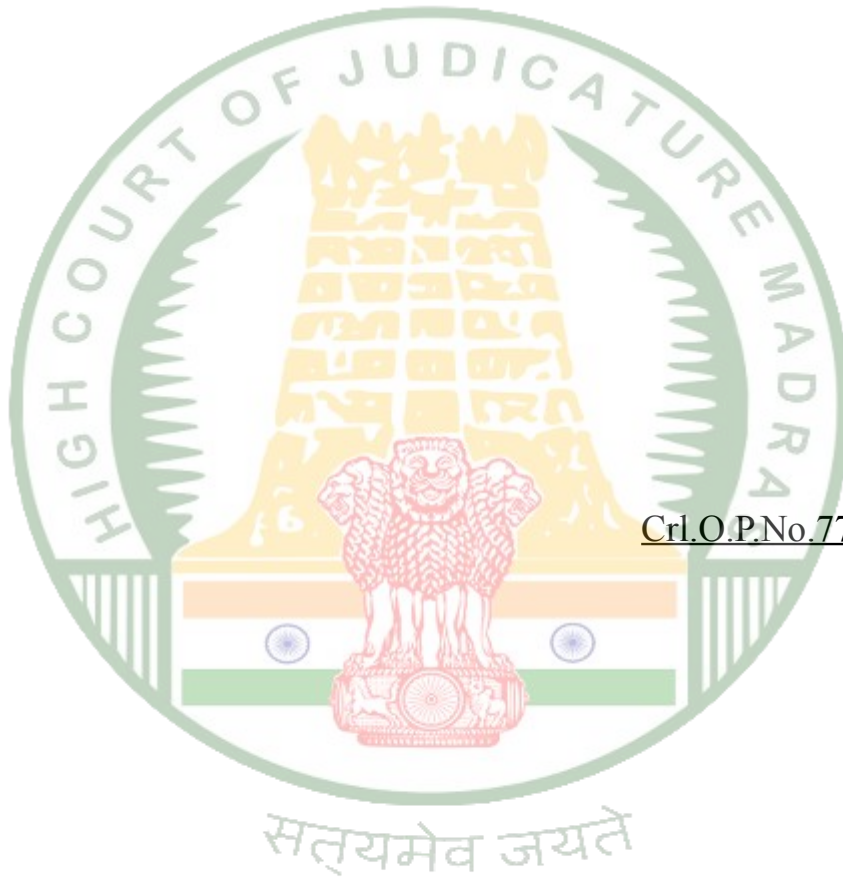
2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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