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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.2640 OF 2018

AND

CRL.M.P.NOS.1092, 1093, 6293 AND 6294 OF 2018

Shanmugam

.. Petitioner/Accused

Vs.

S.Jagannathan

.. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.206 of 2009 on the file of the learned Judicial Magistrate No.1, Namakkal and set aside the order of taking cognizance dated 03.07.2009 in the private complaint filed by the respondent in C.C.No.206 of 2009.

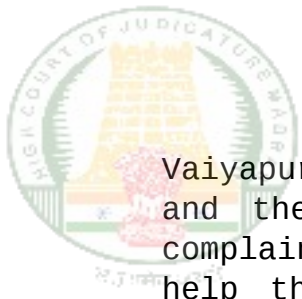
For Petitioner : Mr.M.K.Subramanian

For Respondent : Mr.S.Gunaseelan

ORDER

The present petition has been filed by the petitioner to call for the records in C.C.No.206 of 2009 on the file of the learned Judicial Magistrate No.1, Namakkal and set aside the order of taking cognizance dated 03.07.2009 in the private complaint filed by the respondent in C.C.No.206 of 2009.

2. Facts leading to the present round of litigation is that the defacto complainant has purchased the property situated in S.F.No.452/1 and T.S.No.238, 239, Ward D Block 19, measuring about 3200 sq.ft in Ganesapuram, Namakkal Town from one



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Vaiyapuri under registered Sale Deed bearing Doc.No.1433 of 1979 and the property is a vacant house site. Since the defacto complainant is a refugee returned from Srilanka, in order to help the Srilankan refugees, had executed fifteen Sale Deeds through Chandra Bose / 3rd accused measuring about 150 sq.ft each to construct a house by getting a loan from the Central Government under Housing Loan for Sri Lanka Repatriates on 19.03.1980, bearing Doc.Nos.431 to 445 of 1980, on the file of the Joint Sub Registrar No.2, Namakkal. Subsequently all the 15 land owners had executed Mortgage Deeds to the Central Government, to obtain the said loan and all the Mortgage Deeds were registered. Thereafter, all the 15 persons who had obtained loan returned to Srilanka and the said lands were in possession of the defacto complainant. While being so, the accused persons, who were doing business as real estate middlemen, claimed title over the said property and executed Sale Deeds in favour of them by impersonating the 15 persons and registered the said Sale Deeds before the Joint Sub Registrar No.2, Namakkal. There was a dispute between A1 and A2 with regard to entitlement of title over the said property in O.S.No.1416 of 2004 and the same has been resolved vide Compromise Memo entered between them, wherein 2034 sq.ft was allotted to the 2nd accused and 1668 sq.ft was allotted to the 1st accused and thereafter, 1st accused has filed a Civil Suit in O.S.No.429 of 2005 for not to disturb the peaceful possession. While being so, the 4th accused, claiming title and possession of the property and by stating that all the 15 person who were given 150 sq.ft by the defacto complainant had given a General Power of Attorney on 27.09.2005, had filed O.S.No.420 of 2005, wherein the accused 1 and 2 and the defacto complainant were added as defendants. In the meantime, the Suit filed by the 1st accused for peaceful possession in O.S.No.429 of 2005 was disposed of, as he has not pressed. When the series of civil litigations pending before the Civil Courts, the defacto complainant sent a complaint on 08.07.2006 to the Inspector of Police, Namakkal and to the Superintendent of Police on 28.09.2006 for offences under Sections 120(b), 193, 205, 209, 419, 420, 463, 468, 471 and 506(ii) IPC and 195(1)(b) Cr.P.C. Since no action has been taken on the complaint, he preferred a private complaint under Section 200 Cr.P.C. before the Trial Court in C.C.No.206 of 2009 and the same has been taken cognizance of. Challenging the same, the present petition is filed by the petitioners and to quash the said complaint.



3. The learned counsel appearing for the petitioner submitted that admittedly the petitioner is the owner of the property to the extent of 3600 sq.ft, which was obtained through Sale Deeds from the 15 persons and thereby the right of the defacto complainant over the property is extinguished on the date of registration of the property to the 15 persons. Further the defacto complainant has filed the present private complaint by suppressing the material fact that he has filed Civil Suit against the petitioner herein and others before the Sub Court, Namakkal in O.S.No.278 of 2006, seeking declaration, declaring that the said 15 Sale Deeds executed by the defacto complainant as sham and nominal and if the petitioner has revealed the pendency of the said Suit in the complaint, this complaint would not have been taken on file. The respondent / complainant has filed this complaint with mala fide intention, when the very subject matter is still pending before the competent Civil Court and thereby trying to give criminal colour to the civil transactions. Further it is the submission of the learned counsel for the petitioner that the Sale Deeds were executed in favour of the accused 1 and 2 in the year 1996 and the complaint was lodged belatedly after a lapse of about 10 years in the year 2006, without any sufficient cause and accordingly prays for allowing of this petition.

4. The learned counsel appearing for the respondent submitted that the Sale Deeds executed in favour of accused 1 and 2 and Power of Attorney given to the 4th accused are to be examined with that of the Sale Deeds executed in favour of 15 persons and also the Mortgage Deed executed in favour of the Central Government while obtaining loan and after getting expert's opinion, to unearth the forgery and cheating committed by the accused persons. Further it is the submission of the learned counsel for the respondent, on instructions, that since the issues raised in the Civil Suit is same as that of the issues raised in the criminal complaint, the respondent is not willing to proceed the private complaint and seeks permission of this Court to permit the defacto complainant to proceed the case before the competent Civil Court in O.S.No.278 of 2006.

5. Since the issues are pending before the competent Civil Court, if this Court expresses any opinion on the case on hand, it will adversely affect the rights of the parties before



the Civil Court, where the case is pending in O.S.No.278 of 2006.

6. In view of the limited prayer sought for by the learned counsel for the respondent, this Court, without going into the merits of the case, while allows Criminal Original Petitioner and quashes C.C.No.206 of 2009, on the file of the learned Judicial Magistrate NO.I, Namakkal, permit the parties to go before the Sub Court, Namakkal and canvass all the issues before the learned Judge in O.S.No.278/2006, who inturn, shall consider the same and pass appropriate orders in accordance with law. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Subordinate Judge,
Namakkal.
2. The Judicial Magistrate No.1,
Namakkal.

+1cc to Mr.M.K.Subramanian, Advocate, S.R.No.43776

Cr1.0.P.No.2640 of 2018

GPL(CO)

RLP(07/10/2021)