

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.02.2021	Delivered on 01.03.2021
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.13280 of 2020
and
Crl.MP.No.5175 of 2020

1.Dr.Subba Somu
2.Mr.M.Sivasubramanian

..Petitioners/Accused

.Vs.

1.The Inspector of Police,
CCB II Team XXIII (Land Grabbing Spl Team)
Commissioner's Office Building,
132, EVK Sampath Salai,
Vepery, Chennai 600 007.

2.K.Vanisri ..Respondents/complainant

[The name of the 1st respondent and
Crime No.5722/2020 are amended as per order in
Crl.MP.No.5722/2020 in Crl.OP.No.13280/2020 dt.25.09.2020)

PRAYER : Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the entire
records pertaining to proceedings of the FIR in Crime No.71 of
2020, pending on the file of the first respondent herein against
the petitioners, registered at the instance of the de facto
complainant and quash the same.

For Petitioners : Mr.ARL.Sundaresan
Senior Counsel
Mr.R.Umasuthan

For Respondent : Mr.A.Natarajan
State Public Prosecutor for R1
Asstd: by Mr.M/Mohamed Riyaz
Additional Public Prosecutor

Mr.G.Mohanakrishnan
Mr.S.Janarthanan for R 2

ORDER

This petition has been filed challenging the FIR registered in Crime No. 71 of 2020, on the file of the 1st Respondent.

2. The case of the prosecution is that the subject property originally belonged to a partnership firm which was subsequently dissolved and it is said to have been vested on the de facto complainant by virtue of the decree passed in C.S. No. 483 of 1979. Thereafter, the building in the property was demolished to put up a new construction and a joint venture agreement was also entered into with a developer. The agreement did not go through and hence the property continued to be vacant. The further case of the prosecution is that the vendor of the Petitioners namely, Mr. Iqbal had trespassed into the property and had created documents and also managed to obtain a patta in his favour.

3. There are suits filed by both Mr. Iqbal and the 2nd Respondent claiming for the relief of permanent injunction against each other and the same is pending before the City Civil Court, Chennai. The patta issued in favour of Mr. Iqbal came to be challenged by the 2nd Respondent and the same was cancelled by the order passed by the District Revenue Officer (hereinafter referred to as "DRO") in the year 2011 and a Writ Petition has been filed by Mr. Iqbal before this Court challenging the said Order and the same is pending.

4. Even when a sale deed was executed in favour Mr. Iqbal by one Ms. T. Chandranatham, a complaint came to be given by the 2nd Respondent and an FIR came to be registered in Crime No. 199 of 2012 on the file of CCB, Chennai. This complaint was given on the ground that the accused persons therein have involved in fabrication of documents and were attempting to grab the property of the 2nd Respondent. This FIR was investigated and a final report was filed before the Chief Metropolitan Magistrate Court, Chennai against Mr. Iqbal and four others for offences under Sections 490, 420, 447, 448, 465, 467, 468, 471 r.w. 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and the same was taken on file in CC. No. 3554 of 2020.

5. While so, the Petitioners knowing fully well about the dispute between the parties and also the criminal case pending against his vendor Mr. Iqbal, entered into two agreements of sale dt. 06.04.2016 and 13.02.2017, respectively, and agreed to purchase properties including the property belonging to the 2nd Respondent. Ultimately, a registered sale deed was also executed in favour of the Petitioners by undervaluing the property on 21.012.2018. The Petitioners also

started taking steps to take possession of the property and immediately, on coming to know of the same, the 2nd Respondent has given a complaint and a FIR was registered against Mr. Iqbal (A1) and the Petitioners.

6. Mr. A.R.L. Sundaresan, learned Senior Counsel appearing on behalf of the Petitioners, submitted that the Petitioners are bonafide purchasers and that they had done the due diligence before purchasing the property. The learned senior counsel further submitted that the encumbrance certificate reflected only the sale deed registered in favour of their vendor Mr. Iqbal, in the year 2010 and thereafter, there was no encumbrance on the property. Even the Town Survey Land Register stood in the name of Mr. Iqbal. The major portion of the sale consideration was paid by the Petitioners only by way of RTGS transfer. Infact, at the time when the sale deed was executed in favour of the Petitioners, the civil suit filed by the 2nd Respondent had been dismissed for default on 17.11.2016. it is only after the purchase of the property, the 2nd Respondent took steps to restore the suit. The patta has been transferred in the name of the Petitioners and they have obtained all the necessary permissions to establish an IOCL retail outlet. The learned senior counsel therefore concluded his arguments by submitting that a mere dispute regarding the right and title over the property between the vendor of the Petitioners and the 2nd Respondent cannot automatically infuse any criminal intention against the Petitioners and a dispute which is purely civil in nature is sought to be given a criminal colour and none of the offences mentioned in the FIR are made out against the Petitioners.

7. Per contra, Mr. A. Natarajan, learned State Public Prosecutor appearing on behalf of the 1st Respondent submitted that the Petitioners who are well-educated persons and have a good status in the society intentionally purchased the property knowing fully well that suits are pending between the parties and there is also a criminal case pending against their vendor. The learned State Public Prosecutor further submitted that the Guideline Value of the property works out to nearly Rs.8/- crores and the Market Value will be nearly Rs.16/- crores and the Petitioners intentionally undervalued the property as Rs.4/- crores and the document was referred under Section 47-A of the Stamp Act. This by itself shows that the Petitioners are not bonafide purchasers. That apart, when notice was issued to the Petitioners under Section 41-A of the Code of Criminal Procedure, 1973, (hereinafter referred to as "Cr.P.C."), they failed to attend even a single enquiry. The Petitioners even after knowing about the defective title over the property, and the criminal case pending against their vendor Mr. Iqbal failed to give any complaint against Mr. Iqbal and that prima facie

shows that there is a conspiracy between the Petitioners and Mr. Iqbal (A1). The learned State Public Prosecutor submitted that the case requires a thorough investigation and that there is no ground to interfere with the investigation at this stage and this Criminal Original Petition is liable to be dismissed.

8. The learned counsel appearing on behalf of the 2nd Respondent adopted the arguments of the learned State Public Prosecutor and submitted that the Petitioners have clearly indulged in grabbing the property belonging to the 2nd Respondent.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. It will be of significance to take note of the manner in which the 2nd Respondent and the vendor of the Petitioners are tracing their title to the subject property. This is based on admitted facts and documents relied upon by either side. For the sake of clarity, the derivation of title is presented in a tabulated form hereunder:

Title derivation of the 2nd Respondent and Mr. Iqbal (A1) pertaining to the Subject Property in Old S. Nos. 8/4, 8/1B Part, Old T.S. No. 5/1 Part.

Title derivation of Mrs. K. Vanishree	Title derivation of Mr. Iqbal
Deed of settlement for an extent of 20 grounds and 1203 sq. ft. in S. Nos. 8/1 and 8/2, Mr. Shah Shivaraj Manchhalal, dt. 30-09-1946, Doc No. 3086 of 1946.	Originally owned and possessed by Mrs. Lakshmiammal (alias) Shanbagalakshmi, measuring an extent of 2.47 acers, forming part of larger extent of land measuring 7 acers and 7 cents made up of 5.96 acers in S. Nos. 9/3 and 1.11 acers in S. No.9/1
Partition deed dt. 17.03.1956 between Yarllagada Vennancha Choudhary and his brother Yarllagada Ranganayakallu, each allotted one half.	Deed of Settlement in favor of her son Mr. S.A. Ramalingam vide deed of settlement dt. 08.07.1971, registered as d. No. 4497 of 1971 with an extent of 6 grounds and 532 Sq. Ft. being a portion of larger extent of land in S. Nos. 9/1 Part and 9/3 Part.
D. No. 2685 of 1962, date. 30-9-1962, extent of 5 grounds and 2111 sq. ft. sold to B. Padmini.	Patta in favor of Mr. Ramalingam- 1979 (date not clear)

Further sale of the 5 grounds and 2111 sq. ft. by Mrs. Padmini to 3 others: 1.1 ground and 8.75 sq. ft. to Mr. TS Mohanarangam. 2. 1 ground and 200.75 sq. ft. to SS. Perumal. 3.3 grounds and 1902 sq. ft. sold to Vani Enterprises vide Doc. No. 2944 of 2970, dt. 16.09.1970.	Vide deed of Simple Mortgage dt. 14.09.1973, registered as D. No. 6009 of 1973, Mr. Ramalaingam created a mortgage in and over the northern portion of the said property, being vacant land measuring an extent of 9090 sq. ft. or thereabouts (9101.47 as per Patta), comprised in Old S. Nos. 8/4, 8/1B Part, 9/1, 9/3, Old T.S. No. 5/1 Part, New T.S. No. 5/3, Block No. 7, Vada Agaram Village, in favour of Mr. M. Arunachalam.
Patta in favor of Vanishree Also obtained Patta showing the Old S. No. 8/1B part and T.S. No. 5/1 in Block 7 measuring an extent of 0.08.48.5 hectares in the name of Vani Enterprises, on 16.02.2000. For the very same extent of land.	On default of payment, Mr. M. Arunachalam became the owner of the said property by virtue of Sections 69 and 69A of Transfer of Property Act, 1882.
Ms. Vani Enterprises (Partnership Firm) was dissolved and the property measuring 3 grounds and 1902 sq. ft. was allotted in the name of Ms. Vanishri- 23.04.1991	By assignment deed dt. 11.03.1980, Mr. M. Arunachalam assigns all his rights, title, interest and claim in favor of Mrs. T. Premakumari and T. Chandranatham.
Agreement for development of property entered into between Mrs. K. Vanishree (complainant) and Ceebros Property Development Pvt. Ltd. on 17.09.2001.	Vide deed of settlement dt. 20.05.2010, registered as D. 1753 of 2010, Mrs. T. Premakumari settled 50% of her undivided share, title and interest forming part of the schedule property to and in favor of her sister, Mrs. T. Chandranatham.

Orders dt. 15.07.2008, passed by Hon'ble Madras High Court in OSA No. 42 of 2005 filed by Ceebros Property Development Pvt. Ltd. for recovery of monies against Ms. Vanishree and one another.	Mistake in deed of settlement dt. 20.05.2010, registered as D. 1753 of 2010 with regards to T.S. No. stands rectified as T.S. 5/1 Part in lieu of T.S. No. 9 vide rectification deed dt. 08.06.2010, registered as D. No. 1974 of 2010. Pursuant to this, Mrs. T. Chandranatham becomes the absolute owner. Subsequent to this deed of rectification, Patta is obtained in favour of Mrs. T. Chandranatham dt. 11.06.2010
21.03.2011-Hon'ble High Court Granted Injunction in Suit filed by Vanishree in CS 194 of 2011 against Iqbal. This suit was dismissed for default on 1. 17.11.2016. Thereafter, it was restored on file and was transferred to the VIII th Additional Judge, City Civil Court, Chennai and renumbered as O.S. No. 7913 of 2019 and the same is pending.	Mrs. T. Chandranatham appoints vide D. 654 of 2010, dt. 11.08.2010, a General Power of Attorney in favour of Mr. Farook Sherif and Mr. A. Thameem Ansari And vide sale Document No. 2751 of 2010, dt. 12.08.2010, the property is sold to Mr. S. Iqbal.
	Iqbal filed a suit in O.S. No.13218 of 2010 before the XV th Assistant City Civil Court, Chennai for the relief of permanent injunction against M/s. Vani Enterprises.
	On 13.09.2010, Patta obtained in favor of Mr. Iqbal.
	Order of DRO, dt. 02.02.2011 directing the Tahsildar to cancel the Patta granted in the name of T. Chandranatham and Iqbal and to restore the Patta in the name of Mr. Raghaveyya Venkatrama Chowdhary, in whose name Patta existed prior to this.

	W.P. No. 3641 of 2011 filed by Mr. Iqbal challenging the order of the DRO cancelling the patta in his name. The order was stayed and the writ petition is pending.
	Crime No. 199 of 2012 on the file of CCB, Chennai is against Sale Deed between Ms. T. Chandranatham and Mr. Iqbal. The extent of property is, vacant land measuring an extent of 9090 sq. ft. or thereabouts (9101.47 as per patta) in old S. Nos. 8/4, 8/1B Part, 9/1, 9/3, Old T.S. No. 5/1 Part, New T.S. No. 5/3, Block No. 7 Vada Agaram Village, Vada Agaram Division, Aminjikarai Taluk. On completion of the investigation, final report has been filed before the Chief Metropolitan Magistrate, Chennai and taken on file in CC. No. 3554 of 2020 and the same is pending.

11. The Petitioners came into the scene in the year 2016 when they entered into an agreement of sale with Mr. Iqbal on 06.04.2016, agreeing to purchase certain items of properties which also included the subject property for a total sale consideration of Rs.4/- crores. The sale deed came to be executed in favour of the Petitioners by Mr. Iqbal on 21.12.2018. A careful reading of the sale deed shows that the title has been derived in the manner in which it has been explained in the tabulation herein above. Out of the total sale consideration of Rs.4/- crores, more than ninety percent of the sale consideration has been paid by way of RTGS transfer from the bank account maintained by the Petitioners. Thereafter, the patta has also been transferred in favour of the Petitioners. That apart, there was also a name transfer by the Corporation in the property tax records from the name of Mr. Iqbal to the names of the Petitioners, respectively.

12. The FIR has been registered for the offences of making a false document and cheating. In the given facts,

without undertaking the exercise of a mini investigation, it has to be seen whether the offence has been made out against the Petitioners.

13. In the present case, there is a dispute regarding the right and title over the subject property between the 2nd Respondent and the vendor of the Petitioners. The vendor of the Petitioners is positively claiming a right and title over the subject property and he believes that he is the owner of the property. At the time when the sale deed was executed, in favour of the Petitioners, and at the time when the parties entered into an agreement of sale, the suit filed by the 2nd Respondent had been dismissed for default and it was restored much later. Therefore, there was no strong or compelling material that was available that could have prevented the Petitioners from purchasing the subject property. The property was free from any encumbrance after it was purchased by Mr. Iqbal in the year 2010. The Sale executed in favour of the vendor viz; Mr. Iqbal of the petitioners, has not been put to challenge before a competent civil court till date.

14. It is now a well settled position of law that even when a document is executed by a person claiming a property which is not his, that does not by itself satisfy the requirements of a false document as defined under Section 464, I.P.C. If it does not satisfy the requirements of Section 464, I.P.C., there is no forgery and if there is no forgery, automatically neither Section 467 nor Section 471, I.P.C. will be attracted. Useful reference can be made to the judgement of the Hon'ble Supreme Court in Mohd. Ibrahim v. State of Bihar reported in (2009) 8 SCC 751, Sheila Sebastian v. R. Jawaharaj and Ors. reported in 2018 (3) MLJ (Cr1) 39 and the judgement of this Court in T. Muthuramalingam v. The Inspector of Police, District Crime Branch and Ors. reported in 2018 (4) MLJ (Cr1) 392.

15. Even in the extreme case of branding the Petitioners as speculative buyers of the subject property, knowing fully well about the dispute in title over the subject property, that by itself does not amount to an offence of cheating, forgery and making of false document. In view of the pendency of the suit, at the best, the sale in favour of the Petitioners will be subject to lis pendens. It has now been well settled that a transaction hit by lis pendens would not result in the same being rendered void or illegal or of no effect. It will only be subject to the result of the litigation and the purchaser would be bound by the same. Useful reference can be made to the judgement of the Hon'ble Supreme Court in Hardev Singh v. Gurmail Singh (Dead) by LRs. reported in 2007 (2) CTC 78 and T. Ravi v. B. Chinna Narasimha reported in (2017) 7 SCC 342.

16. The allegations made in the complaint by the 2nd Respondent, even if taken as it is, does not make out any offence against the Petitioners. The continuation of the investigation against the Petitioners will be an abuse of process of law and it requires the interference of this Court.

17. In the result, the FIR in Crime No.71 of 2020, pending investigation on the file of the 1st Respondent is quashed insofar as the Petitioners are concerned and this Criminal Original Petition is accordingly allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Inspector of Police,
CCB II Team XXIII (Land Grabbing Spl Team)
Commissioner's Office Building,
132, EVK Sampath Salai,
Vepery, Chennai 600 007.

2.The Public Prosecutor,
High Court, Madras.

Crl.OP No.13280 of 2020

GPL (CO)
RG.21.04.2021 (9P/3C)

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