



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CrI.O.P.No.26038 of 2019
and
CrI.M.P.No.13845 of 2019

1.Mr.P.Perumal alias V.P.Venkatesan
2.Mr.V.P.Srinivasan @ Dilli
3.Mr.V.Kannammal ..Petitioners / Accused 1,2&6

/versus/

1.State rep.by Inspector of Police,
CCB No.23, Land Grabbing Prevention Special Cell,
Chennai-16.1st Respondent

2.Ms.R.Shali alias Dharshini
rep.by her father and
Natural Guardian S.Rajendran ..2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records pertaining the charge sheet in C.C.No.2 of 2018 dated 26.11.2018 on the file of the Special Judicial Magistrate Court for Land Grabbing Case, Thiruvallur and quash the same as against the petitioners.

For Petitioners : Mr.P.Senthil Kumar

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1
Mr.S.Shankar for R2

ORDER

This Criminal Original Petition has been filed seeking to call for the records pertaining to the charge sheet in C.C.No.2 of 2018 dated 26.11.2018 on the file of the Special Judicial Magistrate Court for Land Grabbing Case, Thiruvallur and quash the same as against the petitioners.



2. Brief facts of the case is that, the de facto complainant is the great grand daughter of one Tr. Vaithiyalinga Naicker, who had acquired the properties in and around Poonamallee, had executed a Will dated 11.02.1976, which was registered as Doc.No.12/1996, thereby, he had reserved life interest to his brother's wife, his wives and his daughter and grand children born to his daughter Tmt. Raniammal. After his demise, as per the Will, the said property belongs to his legal heirs of 10 persons. Out of which, A1 and A2, who are one of legal heirs of the deceased Vaithiyalinga Naicker, had conspired and created a forged Will, which is not a registered Will. On the strength of the Will, they claimed right over the properties and out of the eight legal heirs, except A1 and A2, two of them had passed away and A1 and A2 had obtained power of attorney vide Doc.No.172/1997 from the co-owners with an intention to grab the property under the pretext of managing the properties. On the strength of the power of attorney, A1 and A2 colluded with each others along with A3 to A13 and sold the said property, thereby they cheated the de facto complainant with an intention to grab the whole property for themselves.

3. The learned counsel appearing for the petitioners submitted that, the first and second petitioners are brothers. The third petitioner is the grandmother of the first and second petitioners. The second respondent who represented by her natural guardian one Rajendran, filed a suit in O.S.No.133 of 2014 before the Sub Court, Thiruvallur praying for declaration alleging that the Will dated 11.02.1976 executed by the late Vaidhiyalinga Naicker is a valid Will and the subsequent Will dated 27.09.1981 is false and fabricated one. The said suit was dismissed as not pressed. Again the second respondent filed a suit in O.S.No.51 of 2015 before the District Munsif Court, Poonamallee against the petitioners seeking permanent injunction and the same was dismissed as not pressed on 20.12.2018. He further submitted that, the documents executed by the petitioners and other legal heirs are valid, as per the shares provided in the subsequent Will dated 27.09.1981. The second respondent also accepted the second Will and the partition deed dated 20.03.2000, which was executed on the basis of the second Will dated 27.09.1981. Therefore, the allegations of cheating and forgery for executing various documents, as per the Second Will are false and baseless. The second respondent has filed the criminal complaint belatedly and there is no explanation for the delay. The present complaint, as per the facts and law, is purely vexatious attempt to harass the petitioners and the entire transactions is clearly civil in nature and the complaint as well as charge sheet do not make out any offence as alleged by the prosecution.



4. Heard the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent on the above aspects.

5. On a perusal of the records, it could be seen that, originally, a Will was executed by one Vaithyalinga Naicker on 11.02.1976 and the same was registered as Doc.No.12/1976. The said Will was produced before this Court by the second respondent/de facto complainant. Subsequent Will dated 27.09.1981 is not a registered Will. Based upon the subsequent unregistered Will, the petitioners are claiming right over the property and executed a partition deed, which was denied by the de facto complainant. Provided the Wills are to be proved by examining one of the attesting witnesses, as per Section 68 of the Indian Evidence Act, but the petitioners are fabricated number of documents. Therefore, the criminal proceedings have been initiated by the de-facto complainant and a case was also registered against the petitioners and others. After the investigation, charge sheet has also been filed before the Land Grabbing Special Court and then the same was transferred to the Judicial Magistrate No.I, Poonamallee Court for trial. The petitioners, who filed this petition to quash the criminal proceedings, are entitled to take all the defence available to them before the trial Court.

6. Hence, I do not find any irregularity in the criminal proceedings. Therefore, this Criminal Original Petition is dismissed as no merits.

7. It is made clear that, since the case is of the year 2018, the Special Judicial Magistrate for Land Grabbing Case, Thiruvallur is directed to complete the trial proceedings in C.C.No.2 of 2018, within a period of six months, from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Ari

To:

1. The Inspector of Police,
CCB No.23, Land Grabbing Prevention Special Cell,
Chennai-16.



2. The Special Judicial Magistrate Court
for Land Grabbing Case,
Thiruvallur

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Shankar, Advocate, S.R.No.69724

+1cc to Mr.S.Ranjith Kumar, Advocate, S.R.No.69399

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and
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NSK 31/01/2022