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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.27242 OF 2018

AND CRL.M.P.NO.15722 OF 2018

1.N.Thilagam
2.R.Nallatambhi
3.K.Jayakumar
4.C.Arun

...Petitioners/
Accused

Versus

R.Savitha

...Respondent/
Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, pleaded to call for the records relating to the case in C.C.No.444 of 2018 on the file of the learned Judicial Magistrate No.1, Coimbatore and quash the same as against the petitioners / A1, A2, A8 and A9 by allowing this criminal original petition.

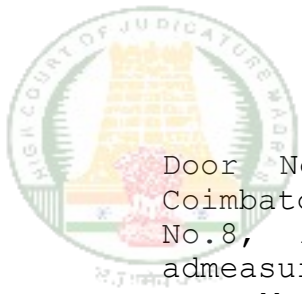
For Petitioner : Mr.S.Viswanthan

For Respondent : No appearance

O R D E R

The petitioner has filed this petition seeking to call for the records relating to the case in C.C.No.444 of 2018, on the file of the learned Judicial Magistrate No.1, Coimbatore and quash the same as against the petitioners / A1, A2, A8 and A9 by allowing this criminal original petition.

2. Facts leading to the present round of litigation is that the property consisting of land and building bearing new



Door No.79A, Old Door Nos.16/32 to 34, T.S.No.7/17 Part, Coimbatore R.S.Puram Town Block No.34, Old Ward No.16, New Ward No.8, in Devanga High School Road, on the Northern Row, admeasuring an extent of 4840 sq.ft.s were originally belonged to one Mr.Subburaj Chettiyar, who executed a registered Will bearing dated 30.01.1985, in favour of his granddaughter Savitha / respondent. In the said Will, the testator Mr.Subburaj, has given life interest to his wife and his son, who were died. In the year 1997, the respondent stating that his father whereabouts were not known for the past several years and in view of the need for money for her urgent needs, given a General Power of Attorney in favour of the 1st petitioner in Doc.No.286/1997 dated 12.06.1997. Subsequently the 1st petitioner agreed to sell the said property and accordingly, the respondent had executed a receipt in favour of the 1st petitioner, wherein, it is evident that the respondent received entire sale consideration of Rs.32,00,000/- and further handed over possession to the 1st petitioner and thereby, the 1st petitioner became absolute owner of the said property.

3. It is alleged by the petitioners that the 1st petitioner being the owner has sold 528 sq.ft of land out of 4840 sq.ft to one Subramaniam and one Viswanathan, vide Sale Deed in Doc.No.3662/1997 and executed a Lease Deed with respect of 4312 sq.ft in favour of the 3rd petitioner vide Doc.No.745/1998 for the period of 99 years. Thereafter, the said Subramanaiaam has given a general power of attorney in favour of the 3rd petitioner with respect to his half share among 528 sq.ft and likewise, since the said Viswanathan has died, his family jointly executed a general power of attorney in favour of the 3rd petitioner with respect to their share among 528 sq.ft. Based on the above said two general power of attorneys, the 3rd petitioner has sold 528 sq.ft of property to the 4th petitioner vide Doc.No.2258/2012, due to which, the 3rd petitioner is a lawful lessee to an extent of 4312 sq.ft and the 4th petitioner is the absolute and lawful owner of 528 sq.ft.s.

4. In the year 1999, subsequent to the Sale Deed and Lease Deed which was based on the general power of attorney, the respondent to his shock and surprise, had cancelled the general power of attorney executed by the respondent in favour of the 1st petitioner, vide Doc.No.170/1999 dated 23.04.1999 and furthermore, on the strength of the said cancellation of general power of attorney, the respondent obtained two different Settlement Deed in Doc.Nos.2127 and 2128/2003, from her father Ramakrishnan. Based on the Settlement Deed, the respondent has once again executed general power of attorney in favour of one Moorthy, who in turn entered into a Sale Agreement with one Bakkiayaraj and then the respondent has cancelled the power executed in favour of the said Moorthy. Hence the said



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Bakkiyaraj has filed collusive suit for specific performance in O.S.NO.395/2005, against Moorthy and the respondents, however the said Moorthy and the respondent remained exparte in the said Suit and disturbed the possession of the petitioners. Immediately, the petitioners 3 and 4 had filed petition under Section 47 of the Civil Procedure Code in R.E.A.No.44/2017, which is still pending.

5. Even prior to the said proceedings, the 4th petitioner has filed Suit for declaration and permanent injunction in O.S.No.524 of 2016, against the respondent and his husband and an order of interim injunction was granted against them in I.A.No.945 of 2016 and apart from that, the respondent has also filed yet another suit in O.S.No.954 of 2016 against all the petitioners, wherein no interim order was granted. Further, the respondent has created invalid and bogus documents and obtained loan from the Karur Vysya Bank, Tiruppur to the tune of 1.20 crores and the said Bank, knowing the real facts, has lodged a complaint against the respondent before the City Crime Branch, Coimbatore and the Registration Department also preferred another complaint in Cr.NO.19/2018 against the respondent. While such being the position, the respondent without any valid title over the property, has filed a private complaint in C.C.NO.444 of 2018, on the file of the learned Judicial Magistrate No.1, Coimbatore. Challenging the said private complaint, the petitioners are before this Court.

6. The learned counsel appearing for the petitioner submitted that the issue involved in the present case is very short. The respondent for want of financial assistance, has created Power of Attorney, vide Doc.No.286/1997, dated 12.06.1997, in favour of the 1st petitioner, who has paid a sum of Rs.32,00,000/- on receipt from the respondent as sale consideration for the property in question. Thereafter, the 1st petitioner has created third party rights on the said property through Sale Deed and Lease Deed, in favour of 3rd petitioner, who in turn sold an extent of 528 sq.ft of property to the 4th petitioner. All of a sudden, the respondent had cancelled the said general power of attorney, vide Doc.No.170/1999 dated 23.04.1999, which has no effect as the document itself not valid in the eye of law and the same would not affect the earlier alienations and encumbrances. Based on the said cancellation, the respondent has obtained two different settlement deeds from her father Ramakrishan and based on which, she had also obtained loans from the Bank. It is further submitted by the learned counsel appearing for the petitioners that the entire property was alienated much prior to the cancellation of the Deed and therefore, cancellation of the said power of attorney, has no effect. Though the respondent initially executed power of attorney in favour of the 1st petitioner on the ground that her



father whereabouts were not known, thereafter, she has obtained another Settlement Deed dated 01.07.2003 from her father and also obtained loans from Banks and other persons, for which, the aggrieved parties had filed criminal cases against the respondent. Moreover, the present complaint is filed on 03.04.2017, after a lapse of eight years from the date of cancellation of the general power of attorney, i.e., on 23.04.1999 and therefore, the private complaint lodged against the petitioner is non-erst in the eye of law and is liable to be quashed and hence prays for allowing of this petition.

7. Though notice was served on the respondent, there is no representation on behalf of her. This Court, considering the pendency of this petition, is inclined to dispose of the matter based on the available records.

8. From the perusal of the materials, it reveals that for the property in question, there are series of Civil Suits were pending before the competent Civil Court between the parties. Therefore, giving criminal colour to a civil dispute by filing the present complaint and making the petitioners to undergo the rigours of trial cannot be sustained. Further the General Power of Attorney, which is alleged to have created by the respondent in favour of the 1st petitioner, was cancelled vide Doc.No.170/1999, dated 23.04.1999. The private complaint against the petitioners were filed on 03.04.2017, belatedly after a period of eight years and there is no reason has been assigned for belated filing of the complaint and therefore, the private complaint itself is not sustainable in the eye of law.

9. In view of the reasons assigned above, this Court is inclined to quash the complaint against the petitioners on the sole ground of limitation of period in filing the complaint. Accordingly, this Criminal Original Petition is allowed and C.C.No.444 of 2018 on the file of the learned Judicial Magistrate No.1, Coimbatore, is quashed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
Coimbatore.

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2. Do-thro The Chief Judicial Magistrate,
Coimbatore.

+lcc to Mr.Dass & Viswa Associates, Advocate, S.R.No.54425

CRL.O.P.No.27242 of 2018

(CO)

PM/03/12/2021