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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2022
PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27815 of 2018 and
Crl.M.P.No.16094 of 2018

1.M.Josephine
2.Joe Anandraj
3.G.Arul Selvan

... Petitioners

Vs.

1.Inspector of Police,
C2, Sunguvarchatram Police Station,
Kancheepuram District.
Cr.No.505 of 2014.

2.Charles Babu

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of C.C.No.30/2018 pending on the file of the Learned District Munsif cum Judicial Magistrate, Sriperumbudur quash the same.

For Petitioners :Mr.S.N.Subramani

For R1 :Mr.A.Damodaran,
Additional Public Prosecutor

For R2 :Mr.G.Karthikeyan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.30 of 2018, pending on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur.

2.The gist of the case is that the 2nd respondent/defacto complainant and her family members lodged a complaint against



the petitioners, who are all legal heirs of common ancestor Bashyam Shanthaiah Naidu. Bashyam Shanthaiah Naidu had two sons viz., Balaiah Naidu and Abraham Naidu. Balaiah Naidu had one son viz., Lourdu Naidu. Lourdu Naidu's daughter viz., Josephine is the 1st petitioner herein, the 2nd petitioner is the son of 1st petitioner and the 3rd petitioner is their Advocate. The another daughter of Lourdu Naidu is one Amalorpava Mary. Abraham Naidu had four sons viz., Devadoss Naidu, Sebastian Naidu, Raju @ Shanthaiya Naidu and Julian. The 2nd respondent is the son of Sebastian Naidu.

3. Abraham Naidu had property in survey Nos.26 & 27 in Sendamangalam Village, Sriperumbudur Taluk to the extent of 70 cents of housing land and 1.26 cents of agricultural land. The said properties were equally divided between Abraham Naidu group and Balaiah Naidu group by 35 cents of housing land and 63 cents of agricultural land. Lourdu Naidu, son of Balaiah Naidu succeeded to the property of 35 cents of housing plot and 63 cents of agricultural land in Sendamangalam Village. During his lifetime, he sold 35 cents of housing land in survey No.26 to Sebastian Naidu of Abraham Naidu group, vide document No.1124 of 1974. The daughters of Lourdu Naidu viz., the 1st petitioner and Amalorpava Mary sold remaining 63 cents of agricultural lands to third party viz., Darvin Joseph, vide document No.1901 of 1993, dated 16.08.1993. From then on, the 1st petitioner and Amalorpava Mary had no property in survey Nos.26 & 27 of housing land and agricultural land in Sendamangalam Village. Earlier, the said properties were divided horizontally, due to which, Abraham Naidu was denied the way to approach the main road, thereafter, the property was divided vertically. Suppressing the same, the 1st petitioner executed a power of attorney in favour of her husband Emanuvel, vide document No.1125 of 2009, dated 14.09.2009. Using the same, the said Emanuvel created bogus sale deed in document No.4000 of 2009 measuring to the extent of 68 cents and sold the same to one Arokiaraj. Again, the 1st petitioner executed gift settlement deed vide document No.124 of 2010, dated 11.01.2010 in favour of her son Anandraj/2nd petitioner. Thus, three forged documents in Nos.1125 of 2009, 4000 of 2009 & 124 of 2010 were created. On coming to know about the above forged documents, the 2nd respondent's group on 21.07.2014 lodged a complaint with the Anti Land Grabbing Cell, Kancheepuram. During enquiry, the petitioners appeared and agreed about the creation of forged documents and encumbrance created to the said property. Thereafter, by way of cancellation deeds in document Nos.3231, 3223 & 3222 of 2014, dated 25.07.2014, the said three forged documents were cancelled.



4. Not stopping with it, again the 1st petitioner executed another settlement deed in favour of her son/2nd petitioner on 28.07.2014 in document No.3264 of 2014. Further, the 1st petitioner executed a bogus sale deed for 34 cents to her Advocate/3rd petitioner in document No.3955 of 2014. Hence, a case came to be registered in Crime No.505 of 2014, for offence under Sections 465, 467, 468, 471, 120(b) and 420 of IPC. On completion of investigation, charge sheet was filed before the trial Court listing 21 witnesses as LW1 to LW21 and several documents. The trial Court finding prima facie material against the petitioners took the case on file in C.C.No.30 of 2018, against which, the present Criminal Original Petition.

5. The learned counsel for the petitioners submitted that the 1st petitioner received the property through her ancestor during the year 1974. The 1st petitioner's father sold 27 cents out of 0.71 cents to Sebastian Naidu, vide document No.1124 of 1974, thereafter, the 1st petitioner is in possession of balance land of 0.44 cents. As regards the 0.63 cents in survey No.27, the property was sold to one Darvin Joseph, vide document No.1901 of 1993. The remaining land is in survey No.27 of 0.63 cents. In the meanwhile, the 2nd respondent and one Jeorme Michel and their family members with an intention to cheat the 1st petitioner, without her consent, made partition of 0.44 cents of land. Thereafter, Abraham Naidu and his family members partitioned the property in survey No.27 about 0.63 cents in between themselves, without consent of the 1st petitioner in document No.3339 of 2009, dated 06.08.2009, against which, the 1st petitioner filed a suit in O.S.No.533 of 2014 before the learned District Munsif Court, Sriperumbudur to declare the partition deed as null and void and the same has been pending. Thereafter, the 1st petitioner lodged a complaint on 16.08.2014 to the Superintendent of Police, Kancheepuram District, which is still pending. In the meanwhile, to escape from the criminal liabilities, the 2nd respondent and his family members lodged a complaint against the petitioners and the same was registered in Crime No.505 of 2014. During enquiry, the petitioners appeared before the 1st respondent Police and the Police advised both the groups to approach the civil Court for their remedies, since the dispute is with regard to inheritance of the family property. This being the case, the 1st respondent Police issued summons under Section 41-A Cr.P.C., dated 31.10.2017, the petitioners appeared before the 1st respondent Police and informed the pendency of civil cases and the proceedings before the Revenue Divisional Officer, Kancheepuram with respect to the same property. Despite the same, for the reasons best known, the 1st



respondent completed the investigation and filed the charge sheet before the trial Court.

6.The learned counsel further submitted that the 1st petitioner is 72 years widow lady and she is suffering heart ailments. The 2nd petitioner is their son, the 3rd petitioner is a practising Advocate, who have been targeted by the 2nd respondent's group.

7.In support of this submissions, the learned counsel for the petitioners produced the typed set containing the (i)family tree of Shanthaiah Naidu, (ii)Partition deed between the petitioner's family, dated 24.08.1982, wherein the 1st petitioner along with her mother Cesalammal and her sister Amalorpava Mary had partitioned the properties among themselves, (iii)Sale deed executed in document No.1901 of 1993 by the 1st petitioner and 2nd respondent's group namely Sebastian Naidu, Raju @ Shanthaiya Naidu and Julian in favour of Darvin Joseph, (iv)Partition deed in document No.3339 of 2009, dated 06.08.2009 of the 2nd respondent's group, wherein the petitioners' group are not parties.

8.He further submitted that the case with predominantly a civil flavour had been given in a criminal colour and hence, he prayed for quashing of the proceedings against the petitioners.

9.The learned counsel for the 2nd respondent submitted that the petitioners by creating forged documents again and again, claiming right over the property of the 2nd respondent's group. It is true that the petitioners belong to Lourdu Naidu's Group. The petitioners' group and the 2nd respondent's group have common ancestor viz., Bashyam Shanthaiah Naidu. The dispute is with regard to the property in survey No.26 to the extent of 70 cents of housing land and survey No.27 to the extent of 1.26 cents of agricultural land situated at Sendamangalam Village, Sriperumbudur Taluk. Earlier, the property was equally divided between Abraham Naidu and Balaiah Naidu of 35 cents of housing plot and 63 cents of agricultural land. Thereafter, Lourdu Naidu, the only son of Balaiah Naidu sold 35 cents of housing land to Sebastian Naidu, the son of Abraham Naidu and thereby, 70 cents of housing land completely vested with Abraham Naidu's group. As regards remaining 63 cents of agricultural land is concerned, the daughters of Lourdu Naidu viz., the 1st petitioner and Amalorpava Mary sold remaining 63 cents of agricultural lands to third party viz., Darvin Joseph, vide document No.1901 of 1993, dated 16.08.1993. Thereafter, the petitioners' group had no right over the



property both in agricultural land and in housing land in survey Nos.26 & 27, situated at Sendamangalam Village, Sriperumbudur Taluk.

10.He further submitted that in the family partition between the 1st petitioner, her mother Sesalammal and her sister Amalorpava Mary in document No.4787 of 1982, the property shown in 'A' schedule pertains to survey No.27/1 situated at Sendamangalam Village, Sriperumbudur Taluk, which was allocated among themselves. The properties mentioned in schedule 'B' and 'C' pertains to some other village. After the demise of Sesalammal, her legal heirs viz., the 1st petitioner and Amalorpava Mary sold 63 cents of agricultural lands to Darwin Joseph, vide document No.1901 of 1993, dated 16.08.1993. Thereafter, the legal heirs of Lourdu Naidu have no right over the property both in agricultural land and in housing land in survey Nos.26 & 27, situated at Sendamangalam Village, Sriperumbudur Taluk. Knowing very well about the same, the 1st petitioner executed a power of attorney in favour of her husband Emanuvel, vide document No.1125 of 2009, dated 14.09.2009, using the same, the said Emanuvel created bogus sale deed in document No.4000 of 2009 measuring to the extent of 68 cents and sold the same to one Arokiaraj, again, the 1st petitioner executed gift settlement deed vide document No.124 of 2010, dated 11.01.2010 in favour of her son Anandraj/2nd petitioner. Initially, the complaint was lodged on 21.07.2014 to the Anti Land Grabbing Cell, Kancheepuram. Finding the dispute is within the family members, the petitioners' and the 2nd respondent's group were called for enquiry and petitioners' admitted about the creation of documents without any valid right and executed three cancellation deeds in document Nos.3231, 3223 & 3222 of 2014 on 25.07.2014. Thereafter, on the legal advice, again created a forged gift settlement deed, vide document No.3264 of 2014, dated 28.07.2014 measuring to the extent of 78 cents of land in favour of the 2nd petitioner and again created bogus sale agreement and sold it to the 3rd petitioner. Based on the above forgery, a case was registered in Crime No.505 of 2014 and after completion of investigation, charge sheet was filed before the trial Court.

11.He further submitted that the petitioners after registration of the case, had filed a suit in O.S.No.533 of 2014 on 15.12.2014 and thereby, attempting to take shelter behind it. The petitioner knowing very well that they have no right over the property in dispute, created forged documents and using the same, cheated the 2nd respondent and his family members. The justification for creation of forged document is disputed and



the same to be decided during trial and not in this petition. Hence, he prayed for dismissal.

12.The learned Additional Public Prosecutor appearing for the 1st respondent Police filed counter and family tree of petitioners and the 2nd respondent and made his submission that the property in survey Nos.26 & 27 to the extent of 70 cents of housing land and 1.26 cents of agricultural land were equally settled in the year 1953 between the petitioners' group and the 2nd respondent's group. From Balaiah Naidu, the property devolved to his son Lourdu Naidu, who sold the property of 35 cents of housing land vide document No.1124 of 1974 in favour of Sebastian Naidu, son of Abraham Naidu. Hence, the Abraham Naidu group hold the entire 70 cents of housing land situated at Sendamangalam Village, Sriperumbudur Taluk. Thereafter, the 1st petitioner as well as her sister Amalorpava Mary, who are the daughters of Lourdu Naidu, vide document No.1901 of 1993, sold 63 cents of agricultural land to one Darvin Joseph. Thereafter, the petitioners' group have no land holding in survey Nos.26 & 27 in Sendamangalam Village. Suppressing the same, the 1st petitioner executed a power of attorney in favour of her husband Emanuvel, vide document No.1125 of 2009, dated 14.09.2009, using the same, the said Emanuvel created bogus sale deed in document No.4000 of 2009 measuring to the extent of 68 cents and sold the same to one Arokiaraj, again, the 1st petitioner executed gift settlement deed vide document No.124 of 2010, dated 11.01.2010 in favour of her son Anandraj/2nd petitioner. Initially, the complaint was lodged on 21.07.2014 to the Anti Land Grabbing Cell, Kancheepuram. Finding the dispute is within the family members, the petitioners' and the 2nd respondent's group were called for enquiry and petitioners' admitted about the creation of documents without any valid right and executed three cancellation deeds in document Nos.3231, 3223 & 3222 of 2014 on 25.07.2014. Hence, quites was given to the dispute between the parties. Not stopping with the same, A1 again created a forged gift deed in document No.3264 of 2014, dated 28.07.2014 to the extent of 78 cents of land in favour of the 2nd petitioner and later, again created bogus sale agreement in favour of the 3rd petitioner. After completion of investigation, the 1st respondent Police filed the charge sheet against the petitioners. Now, the case has been pending for trial in C.C.No.30 of 2018, due to the pendency of the above petition, the trial could not be proceeded. Hence, he prayed for dismissal.

13.This Court considered the rival submissions and perused the materials available on record.



14.The petitioners' group and the 2nd respondents' group hail from common ancestor viz., Bashyam Shanthaiah. The dispute is with regard to ancestral property in survey Nos.26 & 27 in Sendamangalam Village, Sriperumbudur Taluk to the extent of 70 cents of housing land and 1.26 cents of agricultural land. It is well known that now the property at Sendamangalam Village, Sriperumbudur Taluk are gaining prominence, value increased manifold, which has lead to acrimonious dispute between the family members. According to the prosecution, Lurthu Naidu sold 35 cents of housing land in survey No.26 to Sebastian Naidu of Abraham Naidu group, vide document No.1124 of 1974 and the daughters of Lourdu Naidu viz., the 1st petitioner and Amalorpava Mary sold remaining 63 cents of agricultural lands to third party viz., Darvin Joseph, vide document No.1901 of 1993, dated 16.08.1993. Thereafter, the 1st petitioner and Amalorpava Mary had no property in survey Nos.26 & 27 of housing land and agricultural land in Sendamangalam Village. It is seen that the petitioner's filed civil suit in O.S.No.533 of 2014 on 15.12.2014 i.e., after two months of registration of FIR in this case. Obviously, the legal brain is working behind with an idea to project the pendency of the civil suit might absolve the petitioners from criminal proceedings. On the other hand, it exposes the criminality of the petitioners.

15.The 2nd respondent in support of his complaint had produced several documents including koorchit of the year 1953. By way of family partition in document No.3339 of 2009, the properties have been apportioned between the legal heirs of Abraham Naidu, wherein 70 cents of natham housing land apportioned between them, in which, two of the legal heirs were paid compensation amount of Rs.5 lakhs and one of the legal heir was settled with 63 cents of agricultural land. Thus, 70 cents of natham housing land in survey No.26 and 63 cents of agricultural land in survey No.27 settled between the 2nd respondent's group. Be that as it may, there have been claim and counter claim between the petitioners' group and the 2nd respondent's group, which cannot be decided in this quash petition. The points raised by the petitioners are to be decided only during the trial and not in this quash petition.

16.In view of the same, this Court is not inclined to quash the proceedings against the petitioners. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.



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17.It is made clear that the observations made herein is only for the purpose of disposal of the above petition. The trial Court is to decide the case on its own merits uninfluenced with the above order.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1.The District Munsif cum Judicial Magistrate Court,
Sriperumbudur.

2.The Chief Judicial Magistrate,
Chengalpet.

3.The Inspector of Police,
C2, Sunguvarchatram Police Station,
Kancheepuram District.

4.The Public Prosecutor,
High Court, Madras.

ORDER IN
Cr1.O.P.No.27815 of 2018

RK(CO)
CB(03/06/2022)