



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.07.2021

Pronounced on : 01.11.2021

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P(MD)No.4275 of 2021

and Crl.M.P(MD).Nos.2393 and 2394 of 2021

WEB COPY

1.Jameela
2.V.P.Malaichamy
3.M.Jeyalakshmi
4.M.Raja

... Petitioners/Accused Nos.2 to 5

Vs.

1.The Inspector of Police,
District Crime Branch,
Anit-Land Grabbing Special Cell,
Theni District, Theni.
(In Crime No.1 of 2018)

... Respondent / Complainant

2.Abubacker,
S/o.N.Sahul Hammed.

... Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the case in C.C.No.216 of 2019 on the file of the learned Judicial Magistrate Court, Special Court for Land Grabbing cases, Theni and quash the same as illegal.

For Petitioners : Mr.Arulvadivel @ Sekar

For R1 : Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the case in C.C.No.216 of 2019 on the file of the learned Judicial Magistrate Court, Special Court for Land Grabbing cases, Theni and quash the same as illegal.

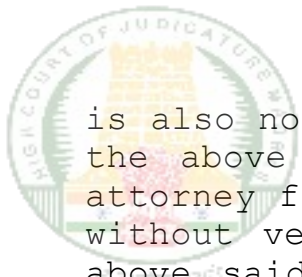
2.The case of the prosecution is that one Thomas, who was the General Power of attorney of the actual land owner, has executed a sale deed in favour of the defacto complainant on 22.08.1995. The petitioners along with other accused created a forged general power of attorney deed and the same was registered in Doc.No.139 of 1995 on the file of the Sub Registrar, Periyakulam, as if it was executed by the defacto complainant in favour of one Pavunraj and later, the said Pavunraj died. After his demise, the deceased



son has executed a sale deed in favour of the 1st petitioner and thereafter, the first petitioner has executed a power of attorney in favour of the second petitioner. Thereafter, the second petitioner executed sale deeds in favour of the 3rd and 4th petitioners respectively. Thus, the petitioners committed offence punishable under Sections 419, 420, 465, 468 and 474 of IPC in Crime No.1 of 2018, which was registered by the first respondent herein. After completing the investigation, the first respondent police has filed a final report before the learned Judicial Magistrate Court, Special Court for Land Grabbing Cases, Theni, which was taken on file in C.C.No.216 of 2019. Challenging the above said case, the present petition has been filed by all the accused namely 1 to 5. The first accused died, after filing the final report.

3.This Criminal Original Petition is filed mainly on the ground that one Murugesan and Lakshmi Ammal Claiming to be the absolute owners of the land property have filed the suit in O.S.No.247 of 2008 on the file of the learned District Munsif, Periakulam seeking for declaration and recovery of possession. The petitioners were arrayed as defendants 2 and 3 and the defacto complainant was arrayed as 17th defendant. The plaintiffs in the plaint claiming that they are the absolute owners of the suit property and the defendants 4 to 12 executed General power of attorney deeds in favour of the said 13th defendant / P.T.Thomas. The said suit was set ex-parte for non appearance on the part of the parties. Thereafter, the above said plaintiffs filed an execution petition in E.P.No.1 of 2015 for delivery of the property. The said petition was opposed only by the second petitioner. Challenging the ex-parte decree, the petitioners 1 and 2 preferred Execution Application in E.A.No.19/2019 under Order 21 Rule 106 of CPC to set aside the exparte decree dated 14.07.2016 and to restore the execution petition and the same was dismissed on 12.12.2019. Aggrieved over the same, the petitioners 1 and 2 filed a Criminal Revision Petition before this Court and the same was returned by the registry for want of "Maintainability". Thereafter, the said Civil Revision Petition was re-presented and the same is under scrutiny before the Registry for numbering.

4.The learned Additional Public Prosecutor would submit that as per the complaint given by the defacto complainant, the deceased Pavunraj has created a forged general power of attorney in the year 1995, as if that was executed by in his favour and utilizing the same he executed the sale deed in favour of the first petitioner in the year 1998, later the first petitioner executed the power of attorney in favour of the second petitioner and the second petitioner executed the sale deed in favour of the petitioners 3 and 4. The complaint given by the second respondent



is also not understandable, because the property did not belong to the above said persons. Mr. P.T.Thomas has obtained a power of attorney from the above said persons. The defacto complainant also without verifying the documents, purchased the property from the above said P.T.Thomas. The above said Pavunraj created a forged power of attorney in his favour is not the subject matter of this case. The property does not belong to the defacto complainant. Murugesan and Lakshmi Ammal are the absolute owners of the property and the suit has been decreed in their favour in year 2014.

5. As mentioned earlier, the dispute arose in the year 1998 and the suit has been filed in the year 2008 by the said Murugesan and Lakshmi Ammal, the same was decreed in their favour, wherein the defacto complainant remained ex-parte and his right over the property is also negatived. Thereafter, the defacto complainant filed a complaint in the year 2018 stating that the property belongs to him and these petitioners along with one Pavunraj created a forged document and grabbed his property. This Court feels that it is a civil case, which is given a Criminal colour and the investigation has not been undertaken by going through the Civil Court Decree and documents.

6. In view of the above, this Court is of the view that the case has been initiated at the instance of the second respondent is not at all maintainable and one Murugesan and Lakshmi Ammal are the competent persons to make any complaint. Hence, this Criminal Original Petition is allowed and the liberty is available to the original owners to file a fresh complaint if so advised. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Judicial Magistrate, Special Court for Land Grabbing cases,
Theni

2.The Inspector of Police,
District Crime Branch,
Anit-Land Grabbing Special Cell,
Theni District, Theni.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-33550[F] dated
02/11/2021)

Crl.O.P(MD)No.4275 of 2021
01.11.2021

PS (CO)

SB(31.12.2021) 4P 5C