



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Criminal Appellate Jurisdiction



Monday, the First day of November Two Thousand and Twenty One
PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) . No.7683 of 2021

in

CRL OP(MD) 3186 OF 2021

WEB COPY

Rajeshwari

... Petitioner/2nd Respondent

Vs

1 S.Muthaiah

... 1st Respondent/Petitioner

2 The Inspector of Police
City Crime Branch
Tirunelveli District.

... 2nd Respondent/1st Respondent

Prayer :-

Criminal Miscellaneous Petition is filed under Section 482 of the Cr.p.c. to reopen and rehear the case in Crl.O.P.(MD) No.3186 of 2021 which was disposed on 14/07/2021

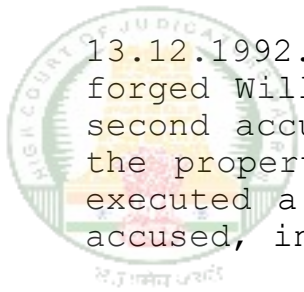
Prayer in CRL OP(MD) . 3186/ 2021 :

Criminal Original Petition is filed under Section 482 of the Cr.p.c. To Call for the records pertaining to the impugned FIR in Crime No. 1/2021 dated 20.01.2021 on the file of the CCB Police station , Tirunelveli City, Tirunelveli District.

ORDER:- This Criminal Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.Poornachandran, Advocate for the Petitioner and of Mr.S.Ramasundara Vijayaraj Advocate for the first Respondent and of Mr.K.Sanjai Gandhi Government Advocate for the 2nd Respondent, this Court made the following order:

Earlier, this court heard the matter in detail in the absence of the learned counsel appearing for the 2nd respondent in the main case. Subsequently, by order, dated 14/07/2021, passed a detailed order, allowing the main criminal original petition. But, however, the learned counsel appearing for the 2nd respondent filed this criminal miscellaneous petition to reopen and rehear the main case.

2.The case of the prosecution on the basis of the complaint given by the second respondent is that the disputed property, originally belongs to her father, namely, Palaveshathevar. The following children namely, Muthulakshmi, Balasubramanian, Murugan, Velappan, Andal, Rajeshwari, Shanmugaiah and P.Ganesan born to him. He executed a Will in favour of the eighth son, namely, Ganesan on



13.12.1992. This is the forged Will. So, on the basis of the forged Will, the first accused made a settlement, in favour of the second accused, who is his wife. The second accused, in turn, sold the property, to the third accused. Later, the first accused has executed a settlement, in favour of the fourth accused. The fourth accused, in turn, sold the property to the second accused.

3. Heard both sides.

4. The learned counsel appearing for the petitioner/2nd respondent would submit that the petitioner in the main petition is also a beneficiary of the above said illegal act and he was also aware of the fraudulent document and having known all these facts, he purchased the property. So for considering this ground, the main petition has to be reheard.

5. Even though, the petitioner in main case is not directly involved in the alleged creation of fraudulent Will, dated 13/12/1992, but I am of the considered view that the petitioner in the main case is also one of the beneficiaries of the above said alleged fraudulent document. Apparently, it is a fraudulent document, since, it is dated 13/12/1992, which falls on Sunday. This position is also admitted by the learned counsel appearing for the petitioner in the main petition. But the main argument is on the basis of the judgment of the Hon'ble Supreme Court in the case of **Mohamed Ibrahim Vs. State of Bihar and another [(2009) 8 SCC 751]**. No doubt, the earlier order has been passed by this court only on the basis of the above said Mohamed Ibrahim's case on the ground that no material is available against the petitioner in the main petition for proceeding, since he was not at all in the picture, when the fraudulent document was created.

6. Since *prima facie* ground is made out that the disputed Will is a forged one, as the date of the registration fell on Sunday, this court is of the considered view that the order, dated 14/07/2021 is to be recalled and the main petition is to be reheard.

7. In view of the above, order passed by this court, in Cr1.OP (MD) No. 3286 of 2021, dated 14.07.2021 is hereby recalled. Accordingly, this Criminal Miscellaneous Petition stands allowed. The Registry is directed to list the main petition for rehearing.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/11/2022

Sub Assistant Registrar (CS)



TO

1. The Inspector of Police
City Crime Branch
Tirunelveli District.

WEB COPY

- 2 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai

ORDER DATED : 01/11/2021

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ORDER
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CRL MP(MD) . No.7683 of 2021
in
CRL OP(MD)No.3186 of 2021

Giving direction and etc.
as stated within.

MK/17.11.2022/3P/4C