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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.11166 of 2015

A.P.Velusamy

...Petitioner/Accused

Vs.

1.The Inspector of Police,
Veerapandi Police Station,
Tirupur City.

2.Poovathal

...Respondents/Complainant

Prayer :- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to quash the First Information Report registered against the petitioner in Crime.No.222/2015 on the file of the first respondent Police.

For Petitioner :Mr.P.M.Duraiswamy.

For Respondents :Mr. R.Murthi, Government Advocate
(Criminal Side) for R1.
Mr.K.Myilsamy for R2.

ORDER

This Criminal Original Petition is filed to quash the First Information Report registered against the petitioner in Crime No.222/2015 on the file of the first respondent Police.

2.The second respondent/de-facto complainant in Crime No.222/2015 gave a complaint against the petitioner and four others alleging that the properties concerned in S.F.Nos.7 and 11/2 in Veerapandi village, Tirupur Taluk & District, to an extent of 11 cents and 1.64 acres, respectively were purchased by her mother Senniammal on 04.09.1957 through a registered sale deed. After her death, these properties were enjoyed by her along with her sister Marathal and deceased sisters, Angathal and Muthathal. Her mother has sister in the same name Senniathal. Her mother died in 1980. Taking advantage of the



fact that, her mother's sister Senniathal name is same, the said Senniathal in collusion with her grand sons A.P.Velusamy, Dhandapani and Murugasamy created a release deed dated 16.12.1985. This release deed was created only with an intention to cheat the second respondent. Using the release deed, a sale deed was executed on 10.04.1995 in favour of Muthulakshmi, wife of A.P.Velusamy. Then, A.P.Velusamy and Muthulakshmi mortgaged the properties with UCO Bank and created a mortgage deed dated 13.08.2005. Subsequently, these properties were sold to one Selvarani on 18.10.2010. When the second respondent came to know about these documents, they inquired with the petitioner and other accused about the creation of these documents. They responded by making criminal intimidation and death threat. Therefore, the complaint in Crime No.222/2015 was given. Complaint was given to the Judicial Magistrate No.2, Tirupur and it was forwarded to first respondent. First respondent registered FIR under Sections 120(B), 467, 468, 471, 420, 294 (b) 506 (i) IPC. Challenging this FIR, this Criminal Original Petition is filed for quashing.

3.The learned counsel for the petitioner submitted that, the second respondent has no connection, whatsoever, with the aforesaid properties. These properties were the properties of his grand mother Senniammal. She had executed a settlement deed in favour of her son Palanisamy on 27.06.1979. He died on 18.11.1985. Then, Senniammal and her daughters executed a release deed on 16.12.1985 in favour of petitioner and his brothers. Then, other transactions as narrated above had taken place. It is the further submission of the learned counsel for petitioner that the second respondent had filed civil suit in O.S.No.430 of 2009 seeking the relief of partition and for costs. In the said suit, the petitioner and his brothers and his wife were the defendants. The trial Court on considering the oral and documentary evidence found that the second respondent and her sister were not able to prove that they are the legal heirs of Senniammal, wife of Palani Gounder and that they are entitled for share in the suit properties. In this view of the matter, the trial Court dismissed the suit. Therefore, the learned counsel for the petitioner submitted that without any evidence in support of the claim of the second respondent that she and her sisters are the children of Senniammal, wife of Palani Gounder, she had filed civil suit and then this complaint. The present criminal complaint is clear abuse process of law and therefore, prays for quashing the FIR.



4. In response, learned counsel for the second respondent submitted that the respondent has filed appeal in A.S.No.35 of 2021 and it is pending on the file of the learned II Additional District Judge, Tirupur. Appeal is continuation of suit proceedings and merely because, suit was dismissed, it cannot be concluded that second respondent has no right in the suit properties. One more submission was made by the learned counsel for the second respondent, of course for the first time, that the properties were entrusted by her mother Senniammal to her sister for care taking and they left to Ooty. Taking advantage of their absence, Senniathal and her mother's sister created release deed and thereafter, subsequent, documents have come into existence. His second submission was not taken either in the plaint filed before Civil Court in O.S.No.430 of 2009 or in the criminal complaint concerned in this case. Therefore, it is not open to the second respondent to take up this plea now.

5. The first respondent supported the submission of second respondent.

6. Perusal of judgment in O.S.No.430 of 2009 shows that, it is claimed in the sale deed dated 04.09.1957 that the properties concerned in this sale deed were purchased by Senniammal, wife of Palani Gounder. Her place of residence was shown as Andipalayam Village, Tiruppur Taluk. It is seen from the evidence of second respondent that her father belong to Chinnakalipalayam village ancestrally and it is connected to Iduvai Village. Judgment shows that the second respondent had produced only certified copy of the sale deed in the name of Senniammal and other transactions in connection with the properties as Ex.A1 to Ex.A4, encumbrance certificate, sale deed in favour of Muthulakshmi, copy of First Information Report, copy of sale deed in the name of Palani Gounder and Muthulakshmi Gounder were produced as Ex.A5 to Ex.A9. Petitioner produced Ex.B1 to B18 documents. Importantly, they filed copy of death certificate of Palani Gounder and his legal heir certificate, copy of patta certificate, copy of loan discharge receipt, property tax, house tax receipts to establish their claim of title and possession in respect of the properties. Thus, it is clear from the evidence produced that the second respondent has miserably failed to establish that she and her sisters are the children of Senniammal, wife of Palani Gounder. It is also her evidence that they left Ooty atleast 50 years back. Neither second respondent nor any of her sister's heirs is in possession and enjoyment of the disputed properties. Thus, this Court is of the considered view that having failed to make out prima-facie



case to stake claim to the properties in S.F.Nos.7 and 11/2 in Veerapandi village, Tirupur Taluk & District, it is not open to the second respondent to give complaint against the petitioner and his brothers alleging that the properties concerned in S.F.Nos.7 and 11/2 in Veerapandi village, Tirupur Taluk & District, to an extent of 11 cents and 1.64 acres respectively were purchased by her mother Senniammal on 04.09.1957 and the accused had created documents against her interest. Moreso, when the suit filed by her was pending. Therefore, this Court is of the considered view that this is a fit case for quashing and therefore FIR in Crime No.222/2015 is quashed. This Criminal Revision Petition is allowed.

7.Whatever the observations made in this order are made only for the disposal of this Criminal Original Petition. These observations will no way affect the decision to be made in A.S.No.35 of 2021. The learned First Appellate Judge is directed to dispose the appeal without being influenced by the observation made in this order.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The II Additional District Judge,
Tiruppur.

2.The Inspector of Police,
Veerapandi Police Station,
Tirupur City

3.The Public Prosecutor
High Court of Madras.

+1cc to M/s.P.M.Duraiswamy, Advocate Sr.8754
+1cc to M/s.K.Myilsamy, Advocate Sr.8525

CRL.O.P.No.11166 of 2015

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srg 01/03/2022