



*Crl.O.P.No.1786 of 2021
and Crl.MP.Nos.1035 & 1037 of 2021*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.1786 of 2021
and
Crl.MP.Nos.1035 & 1037 of 2021

T.Radha

... Petitioner

-Vs-

1. State rep. by
The Inspector of Police,
DCB Police Station,
Kallakurichi.
(Crime No.11 of 2018)

2. S.Ramasamy

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records pertaining to C.C.No.44 of 2019 on the file of the learned Judicial Magistrate No.1, Kallakurichi and quash the same.

For Petitioner : Mr.R.Baskar
For Respondents : Mr.A.Damodaran
Additional Public Prosecutor for R1
Mr.R.Kumaravel for R2



*Crl.O.P.No.1786 of 2021
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WEB COPY

ORDER

This Criminal Original Petition has been preferred to call for the records pertaining to C.C.No.44 of 2019 on the file of the learned Judicial Magistrate No.1, Kallakurichi and quash the same as illegal.

2. A case has been registered on the allegation of the second respondent that his brother Thangarasu had executed settlement deed in favour of his minor sons by appointing his wife as Guardian for the minors and for transacting the properties in Survey Nos.196/5, 196/6 and 195/14. The allegation is that in the above said settlement deed, he had conveyed more than the extent, which is due to him under the Partition Deed entered into between four brothers, which includes the complainant and the first accused.

3. The contents of the complaint would show that there was a Partition Deed entered into between the defacto complainant and his three brothers namely (i) Manjamuthu, (ii) Balu and (iii) Thangarasu on 22.05.2003 by virtue of a registered Partition Deed. In the said Partition, the subject matter of the property was not allotted to the share of Thangarasu, but it was allotted to the shares of his other three brothers. One of the brother by name



*Crl.O.P.No.1786 of 2021
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WEB COPY

Thangarasu is the first accused and his wife is the second accused in this case.

4. The allegation of the second respondent/defacto complainant is that his brother Thangarasu had executed Settlement Deed in favour of his minor sons in respect of the shares which were not allotted to him in the earlier Partition dated 22.05.2003 by appointing his wife/second accused as the Guardian for his minor children. After the conclusion of the investigation, the petitioner and her husband were charge sheeted for the offence under Sections 423 and 471 of IPC.

5. Section 423 of IPC speaks about the dishonest and fraudulent execution of deed of transfer containing false statement of consideration and Section 471 of IPC is with respect to the usage of the forged document as a genuine one. The first accused is said to have executed only a settlement deed and not a Sale Deed. At the best, in the Settlement Deed, the consideration would be love and affection. Any father will naturally have love and affection towards his children and hence, the consideration stated in the alleged settlement deed cannot be construed as the one within the purview of Section 423 of IPC. For the sake of convenience, Section 423 IPC is



*Crl.O.P.No.1786 of 2021
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WEB COPY

extracted as under:-

"423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration-

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

6. But the observation about consideration in this case cannot have any bearing on the entitlement of the first accused or his children over the property. It could be true that the first accused had executed the Settlement Deed in respect of properties, which he did not have any title. But the said issue is purely civil in nature. The settlement deed executed by the first accused in favour of his minor children, may not be valid in the eye of law, in view of his lack of title and that it will not pass any title in favour of his children. If he is aggrieved, he can file a suit in this regard and seek



*Crl.O.P.No.1786 of 2021
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appropriate relief in a Civil Court. Regarding the offence under Section 471 IPC, one should use forged document as a genuine one. However, the settlement deed executed by the first accused is a registered settlement deed dated 17.03.2011, though it might be a transaction done without possessing valid title. It is appropriate to extract Section 471 of IPC is as under:-

"471. Using as genuine a forged document -

Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."

7. Neither the allegations nor the materials produced before the Court would make out an offence under Sections 423 or 471 IPC for the alleged acts done by the first accused in respect of the subject properties. So far as the second accused is concerned, she is only shown as the guardian for her minor children. There is no overtact on her part even if it is presumed that some criminal action has been committed. As stated already, the execution of a settlement deed by someone without possessing valid title will give cause of action for a civil suit and not for a criminal complaint. Since the civil dispute



*Crl.O.P.No.1786 of 2021
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WEB COPY

is given with criminal color, I feel that the proceedings against the petitioner is liable to be quashed.

R.N.MANJULA, J,

kmi

8. In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.44 of 2019 on the file of the learned Judicial Magistrate No.1, Kallakurichi is hereby quashed. Consequently, connected miscellaneous petition is closed.

27.09.2022

Index : Yes/No

Speaking/Non Speaking order
kmi

To

1. The Inspector of Police,
DCB Police Station,
Kallakurichi.
2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.1786 of 2021



WEB COPY



*Crl.O.P.No.1786 of 2021
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